

111TH CONGRESS
1ST SESSION

S. 1691

To comprehensively regulate derivatives markets to increase transparency
and reduce risks in the financial system.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2009

Mr. REED introduced the following bill; which was read twice and referred to
the Committee on Banking, Housing, and Urban Affairs

A BILL

To comprehensively regulate derivatives markets to increase
transparency and reduce risks in the financial system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Comprehensive Derivatives Regulation Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—REGULATION OF SECURITY-BASED DERIVATIVES

Sec. 101. Definitions.
Sec. 102. Rationalization of financial product oversight.

- Sec. 103. Required clearing of standardized derivative through central counterparties and the use of trade repositories.
- Sec. 104. Prudential supervision and regulation of significant security-based derivatives market participants and incentives for trading on regulated exchanges.
- Sec. 105. Recordkeeping and reporting requirements for derivatives market participants.
- Sec. 106. Prohibition of market manipulation, fraud, and other market abuses.
- Sec. 107. Protections for marketing security-based swaps to certain persons.
- Sec. 108. Enforcement.
- Sec. 109. Enforceability of security-based swaps.
- Sec. 110. Transfer and rights of certain CFTC employees.

TITLE II—REGULATION OF COMMODITY-BASED DERIVATIVES

- Sec. 201. Definitions.
- Sec. 202. Rationalization of financial product oversight.
- Sec. 203. Required clearing of standardized derivatives through central counterparties and use of trade repositories.
- Sec. 204. Prudential supervision and regulation of significant commodity-based derivatives market participants and incentives for trading on regulated exchanges.
- Sec. 205. Recordkeeping and reporting requirements for derivatives market participants.
- Sec. 206. Prohibition of market manipulation, fraud, and other market abuses.
- Sec. 207. Protections for marketing commodity-based swaps to certain persons.
- Sec. 208. Commodity-based swap execution facilities.
- Sec. 209. Enforcement.
- Sec. 210. Enforceability of commodity-based swaps.

TITLE III—OTHER PROVISIONS

- Sec. 301. Margining and other risk management standards for central counterparties.
- Sec. 302. Determining the status of swaps.
- Sec. 303. Study and report on implementation.
- Sec. 304. Rulemaking.
- Sec. 305. Effective date.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

- 3 (1) in recent years, the over-the-counter deriva-
- 4 tives market has grown rapidly, but regulators have
- 5 lacked key information and adequate authority to
- 6 address systemic and other risks posed by unregu-
- 7 lated derivatives trading;

1 (2) excessive risk taking among market partici-
 2 pants, combined with limited regulatory oversight of
 3 such products, was a significant cause of the recent
 4 financial crisis;

5 (3) lack of transparency in the markets has
 6 contributed to market instability and uncertainty,
 7 and has resulted in a less efficient marketplace;

8 (4) customized derivative products provide key
 9 benefits to certain market participants and should
 10 be permitted under comprehensive regulation, but all
 11 derivatives activities should be accompanied by ap-
 12 propriate risk management and prudential stand-
 13 ards; and

14 (5) the trading of derivatives on regulated ex-
 15 changes should be encouraged because of the signifi-
 16 cant associated market efficiencies.

17 **TITLE I—REGULATION OF** 18 **SECURITY-BASED DERIVATIVES**

19 **SEC. 101. DEFINITIONS.**

20 (a) DEFINITIONS UNDER THE SECURITIES EX-
 21 CHANGE ACT OF 1934.—Section 3(a) of the Securities Ex-
 22 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

23 (1) in paragraph (10), by inserting “security-
 24 based swap,” after “security future,”;

1 (2) in paragraph (13), by adding at the end the
 2 following: “For any security-based swap, such terms
 3 include the execution, termination (prior to its
 4 scheduled maturity date), assignment, exchange, or
 5 similar transfer or conveyance of, or extinguishing of
 6 rights or obligations under, a security-based swap,
 7 as the context may require.”;

8 (3) in paragraph (14), by adding at the end the
 9 following: “For any security-based swap, such terms
 10 include the execution, termination (prior to its
 11 scheduled maturity date), assignment, exchange, or
 12 similar transfer or conveyance of, or extinguishing of
 13 rights or obligations under, a security-based swap,
 14 as the context may require.”; and

15 (4) by adding at the end the following:

16 “(65) DERIVATIVE.—The term ‘derivative’
 17 means—

18 “(A) any future, forward, swap, warrant,
 19 put, call, straddle, option, or privilege on or re-
 20 lated to—

21 “(i) any security, or group or index of
 22 securities (including any interest therein or
 23 based on the value thereof); or

24 “(ii) any issuer of securities or group
 25 or index of issuers of securities (including

1 any interest therein or based on the value
2 thereof); and

3 “(B) any contract of sale for future deliv-
4 ery of any commodity (or option on such con-
5 tract).

6 “(66) SWAP.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the term ‘swap’ means any
9 agreement, contract, or transaction that—

10 “(i) is a put, call, cap, floor, collar, or
11 similar option of any kind for the purchase
12 or sale of, or based on the value of, 1 or
13 more interest or other rates, currencies,
14 commodities, indices, quantitative meas-
15 ures, or other financial or economic inter-
16 ests or property of any kind;

17 “(ii) provides for any purchase, sale,
18 payment, or delivery (other than a dividend
19 on an equity security) that is dependent on
20 the occurrence, nonoccurrence, or the ex-
21 tent of the occurrence of an event or con-
22 tingency associated with a potential finan-
23 cial, economic, or commercial consequence;

24 “(iii) provides on an executory basis
25 for the exchange, on a fixed or contingent

1 basis, of 1 or more payments based on the
2 value or level of 1 or more interest or other
3 rates, currencies, commodities, securities,
4 instruments of indebtedness, indices, quan-
5 titative measures, or other financial or eco-
6 nomic interests or property of any kind, or
7 any interest therein or based on the value
8 thereof, and that transfers, as between the
9 parties to the transaction, in whole or in
10 part, the financial risk associated with a
11 future change in any such value or level
12 without also conveying a current or future
13 direct or indirect ownership interest in an
14 asset (including any enterprise or invest-
15 ment pool) or liability that incorporates the
16 financial risk so transferred, any such
17 agreement, contract, or transaction com-
18 monly known as an interest rate swap, in-
19 cluding a rate floor, rate cap, rate collar,
20 cross-currency rate swap, basis swap, cur-
21 rency swap, equity index swap, equity
22 swap, debt index swap, debt swap, credit
23 spread, credit default swap, credit swap,
24 weather swap, energy swap, metal swap,

1 agricultural swap, emissions swap, or com-
 2 modity swap;

3 “(iv) is an agreement, contract, or
 4 transaction that is, or in the future be-
 5 comes, commonly known to the trade as a
 6 swap; or

7 “(v) is any combination or permuta-
 8 tion of, or option on, any agreement, con-
 9 tract, or transaction described in any of
 10 clauses (i) through (iv).

11 “(B) EXCLUSIONS.—The term ‘swap’ does
 12 not include—

13 “(i) any contract of sale for future de-
 14 livery traded on or subject to the rules of
 15 any board of trade designated as a con-
 16 tract market under section 5 of the Com-
 17 modity Exchange Act (7 U.S.C. 7)—

18 “(I) on a commodity other than a
 19 security; or

20 “(II) that is not based on or sub-
 21 ject to the occurrence of a bona fide
 22 contingency that might reasonably be
 23 expected to affect or be affected by
 24 the creditworthiness of a party other
 25 than a party to such contract;

1 “(ii) any sale of any cash commodity
2 or security for deferred or delayed ship-
3 ment or delivery;

4 “(iii) any put, call, straddle, option, or
5 privilege on any security, certificate of de-
6 posit, or group or index of securities, in-
7 cluding any interest therein or based, in
8 whole or in part, on the value thereof,
9 whether physically or cash settled;

10 “(iv) any put, call, straddle, option, or
11 privilege entered into on a national securi-
12 ties exchange registered pursuant to sec-
13 tion 6(a) relating to foreign currency;

14 “(v) any agreement, contract, or
15 transaction providing for the purchase or
16 sale of 1 or more securities on a fixed
17 basis, whether physically or cash settled;

18 “(vi) any agreement, contract, or
19 transaction providing for the purchase or
20 sale of 1 or more securities on a contingent
21 basis, unless such agreement, contract, or
22 transaction predicates such purchase or
23 sale on the occurrence of a bona fide con-
24 tingency that might reasonably be expected
25 to affect or be affected by the creditworthi-

1 ness of a party other than a party to the
2 agreement, contract, or transaction;

3 “(vii) any note, bond, or evidence of
4 indebtedness that is a security (as defined
5 in section 2(a)(1) of the Securities Act of
6 1933 (15 U.S.C. 77b(a)(1)) or paragraph
7 (10) of this subsection);

8 “(viii) any agreement, contract, or
9 transaction that is—

10 “(I) based on, or references, a se-
11 curity; and

12 “(II) entered into directly or
13 through an underwriter (as defined in
14 section 2(a)(11) of the Securities Act
15 of 1933 (15 U.S.C. 77b(a)(11))) by
16 the issuer of such security;

17 “(ix) any security future product (as
18 defined in paragraph (56));

19 “(x) any hybrid instrument that is
20 predominantly a banking product, as pro-
21 vided in section 405 of the Commodity Fu-
22 tures Modernization Act of 2000 (Public
23 Law 106–554; 114 Stat. 2763A–455), or
24 any hybrid instrument that is predomi-
25 nantly a security, as provided in section

2(f) of the Commodity Exchange Act (as
in effect on the day before the date of en-
actment of the Comprehensive Derivatives
Regulation Act of 2009);

“(xi) any agreement, contract, or
transaction that is an insurance or endow-
ment policy or annuity contract or optional
annuity contract issued by a corporation
that is subject to the supervision of the in-
surance commissioner, bank commissioner,
or any agency or officer performing like
functions, of any State; or

“(xii) any identified banking product
specified in paragraphs (1) through (5) of
section 206(a) of the Gramm-Leach-Bliley
Act (15 U.S.C. 78c note), mortgage or
mortgage purchase commitment, or any
sale of installment loan contracts or receiv-
ables, if any such product or instrument is
not marketed or sold as an alternative to
a swap.

“(67) ELIGIBLE CONTRACT PARTICIPANT.—The
term ‘eligible contract participant’ means—

“(A) acting for its own account—

1 “(i) a financial institution (as defined
2 in section 1a(15) of the Commodity Ex-
3 change Act (7 U.S.C. 1(a)(15)), as in ef-
4 fect on the day before the date of enact-
5 ment of the Comprehensive Derivatives
6 Regulation Act of 2009);

7 “(ii) an insurance company that is
8 regulated by a State, or that is regulated
9 by a foreign government and is subject to
10 comparable regulation, as determined by
11 the Commission, including a regulated sub-
12 sidiary or affiliate of such an insurance
13 company;

14 “(iii) an investment company that is
15 subject to regulation under the Investment
16 Company Act of 1940 (15 U.S.C. 80a–1 et
17 seq.) or a foreign person performing a
18 similar role or function subject as such to
19 foreign regulation (regardless of whether
20 each investor in the investment company or
21 the foreign person is itself an eligible con-
22 tract participant);

23 “(iv) a commodity pool that—

24 “(I) has total net assets exceed-
25 ing \$5,000,000; and

1 “(II) is formed and operated by a
2 person that is subject to regulation
3 under the Commodity Exchange Act
4 (7 U.S.C. 1 et seq.) or a foreign per-
5 son performing a similar role or func-
6 tion subject as such to foreign regula-
7 tion (regardless of whether each inves-
8 tor in the commodity pool or the for-
9 eign person is itself an eligible con-
10 tract participant);

11 “(v) a corporation, partnership, pro-
12 prietorship, organization, trust, or other
13 entity—

14 “(I) that has total net assets ex-
15 ceeding \$10,000,000; or

16 “(II) that—

17 “(aa) has total net assets
18 exceeding \$5,000,000; and

19 “(bb) enters into an agree-
20 ment, contract, or transaction in
21 connection with the conduct of
22 the business of the entity or to
23 manage the risk associated with
24 an asset or liability owned or in-
25 curred or reasonably likely to be

1 owned or incurred by the entity
2 in the conduct of the business of
3 the entity;

4 “(vi) an employee benefit plan that is
5 subject to the Employee Retirement In-
6 come Security Act of 1974 (29 U.S.C.
7 1001 et seq.), a governmental employee
8 benefit plan, or a foreign person per-
9 forming a similar role or function that is
10 subject as such to foreign regulation—

11 “(I) that has total assets exceed-
12 ing \$5,000,000; or

13 “(II) the investment decisions of
14 which are made by—

15 “(aa) an investment adviser
16 or commodity trading advisor
17 that is subject to regulation
18 under the Investment Advisers
19 Act of 1940 (15 U.S.C. 80b–1 et
20 seq.) or the Commodity Ex-
21 change Act (7 U.S.C. 1 et seq.);

22 “(bb) a foreign person per-
23 forming a similar role or function
24 that is subject as such to foreign
25 regulation;

1 “(cc) a financial institution
2 (as defined in section 1a(15) of
3 the Commodity Exchange Act (7
4 U.S.C. 1(a)(15)), as in effect on
5 the day before the date of enact-
6 ment of the Comprehensive De-
7 rivatives Regulation Act of
8 2009); or

9 “(dd) an insurance company
10 described in clause (ii), or a reg-
11 ulated subsidiary or affiliate of
12 such an insurance company;

13 “(vii)(I) a governmental entity (in-
14 cluding the United States, a State, or a
15 foreign government) or political subdivision
16 of a governmental entity;

17 “(II) a multinational or supranational
18 government entity; or

19 “(III) an instrumentality, agency, or
20 department of an entity described in sub-
21 clause (I) or (II),
22 except that such term does not include an
23 entity, political subdivision, instrumen-
24 tality, agency, or department referred to in
25 subclause (I) or (III), unless the entity, po-

1 litical subdivision, instrumentality, agency,
2 or department owns and invests on a dis-
3 cretionary basis \$50,000,000 or more in
4 investments, provided that, with respect to
5 any State or entity, political subdivision,
6 agency, or department of a State, such
7 amount is exclusive of any proceeds from
8 any offering of municipal securities;

9 “(viii)(I) a broker or dealer that is
10 subject to regulation under this title or a
11 foreign person performing a similar role or
12 function that is subject as such to foreign
13 regulation, except that, if the broker or
14 dealer or foreign person is a natural per-
15 son or proprietorship, the broker or dealer
16 or foreign person shall not be considered to
17 be an eligible contract participant, unless
18 the broker or dealer or foreign person also
19 meets the requirements of clause (v) or
20 (xi);

21 “(II) an associated person of a reg-
22 istered broker or dealer concerning the fi-
23 nancial or securities activities, of which,
24 the registered person makes and keeps
25 records under section 15C(b) or 17(h); and

1 “(III) an investment bank holding
2 company (as defined in section 17(i));

3 “(ix) a futures commission merchant
4 that is subject to regulation under the
5 Commodity Exchange Act or a foreign per-
6 son performing a similar role or function
7 that is subject as such to foreign regula-
8 tion, except that, if the futures commission
9 merchant or foreign person is a natural
10 person or proprietorship, the futures com-
11 mission merchant or foreign person shall
12 not be considered to be an eligible contract
13 participant, unless the futures commission
14 merchant or foreign person also meets the
15 requirements of clause (v) or (xi);

16 “(x) a floor broker or floor trader that
17 is subject to regulation under the Com-
18modity Exchange Act in connection with
19 any transaction that takes place on or
20 through the facilities of a registered entity
21 (as defined in section 1a(29) of the Com-
22modity Exchange Act (7 U.S.C. 1(a)(29)),
23 as in effect on the day before the date of
24 enactment of the Comprehensive Deriva-
25tives Regulation Act of 2009, other than

1 an electronic trading facility with respect
2 to a significant price discovery contract),
3 or an exempt board of trade operating
4 under section 5d of the Commodity Ex-
5 change Act (7 U.S.C. 7a-3), or any affil-
6 iate thereof, on which such person regu-
7 larly trades; or

8 “(xi) a natural person who—

9 “(I) owns and invests on a dis-
10 cretionary basis not less than
11 \$10,000,000;

12 “(II) owns and invests on a dis-
13 cretionary basis not less than
14 \$5,000,000 and who enters into the
15 agreement, contract, or transaction in
16 order to manage the risk associated
17 with an asset owned or liability in-
18 curred, or reasonably likely to be
19 owned or incurred, by the individual;
20 or

21 “(III) is an officer or director of
22 an entity (or a person performing
23 similar functions) and who enters into
24 the agreement, contract, or trans-
25 action in order to manage the risk as-

1 sociated with the securities of such
2 entity owned by the individual at the
3 time of entering into the agreement,
4 contract, or transaction;

5 “(B)(i) a person described in clause (i),
6 (ii), (iv), (v), (viii), (ix), or (x) of subparagraph
7 (A) or in subparagraph (C), acting as broker or
8 performing an equivalent agency function on
9 behalf of another person described in subpara-
10 graph (A) or (C); or

11 “(ii) an investment adviser that is subject
12 to regulation under the Investment Advisers
13 Act of 1940 (15 U.S.C. 80b–1 et seq.), a com-
14 modity trading advisor that is subject to regula-
15 tion under the Commodity Exchange Act (7
16 U.S.C. 1 et seq.), a foreign person performing
17 a similar role or function that is subject as such
18 to foreign regulation, or a person described in
19 clause (i), (ii), (iv), (v), (viii), (ix), or (x) of
20 subparagraph (A) or in subparagraph (C), in
21 any such case acting as investment manager or
22 fiduciary (but excluding a person acting as
23 broker or performing an equivalent agency
24 function) for another person described in sub-
25 paragraph (A) or (C) and who is authorized by

1 such person to commit such person to the
2 transaction; or

3 “(C) any other person that the Commis-
4 sion determines by rule, jointly with the Com-
5 modity Futures Trading Commission, to be an
6 eligible contract participant, in light of the fi-
7 nancial or other qualifications of the person.

8 “(68) PERSON ASSOCIATED WITH A SIGNIFI-
9 CANT SECURITY-BASED DERIVATIVES MARKET PAR-
10 TICIPANT.—

11 “(A) IN GENERAL.—The term ‘person as-
12 sociated with a significant security-based de-
13 rivatives market participant’ or ‘associated per-
14 son of a significant security-based derivatives
15 market participant’ means—

16 “(i) any partner, officer, director, or
17 branch manager of a significant security-
18 based derivatives market participant (in-
19 cluding any individual who holds a similar
20 status or performs a similar function with
21 respect to any partner, officer, director, or
22 branch manager of a significant security-
23 based derivatives market participant);

24 “(ii) any person that directly or indi-
25 rectly controls, is controlled by, or is under

common control with a significant security-based derivatives market participant; and

“(iii) any employee of a significant security-based derivatives market participant.

“(B) EXCLUSION.—Other than for purposes of section 15F(e)(2), the term ‘person associated with a significant commodity-based derivatives market participant’ or ‘associated person of a significant security-based derivatives market participant’ does not include any person associated with a significant security-based derivatives market participant, the functions of which are solely clerical or ministerial.

“(69) SECURITY DERIVATIVE.—The term ‘security derivative’ means—

“(A) any derivative, other than a derivative instrument swap, on or related to—

“(i) any security, or group or index of securities (including any interest therein or based on the value thereof); or

“(ii) any issuer of securities or group or index of issuers of securities (including any interest therein or based on the value thereof); and

1 “(B) any security that the Commission by
2 rule, regulation, or order determines is a secu-
3 rity derivative.

4 “(70) SECURITY-BASED SWAP.—The term ‘se-
5 curity-based swap’ means a swap, of which a mate-
6 rial term—

7 “(A) is based on the price, yield, value, or
8 volatility of any security or any group or index
9 of securities, or any interest therein, other than
10 interest rate or currency;

11 “(B) is dependent on the occurrence, non-
12 occurrence, or the extent of the occurrence of
13 an event or contingency associated with a po-
14 tential financial, economic, or commercial con-
15 sequence that is related to or based on a secu-
16 rity, an interest in a security, an issuer of a se-
17 curity, or group or index of securities, or inter-
18 ests in securities or issuers of securities, or
19 based on the value of any of the foregoing;

20 “(C) provides for the purchase or sale of 1
21 or more securities on a contingent basis, wheth-
22 er physically or cash settled, if such agreement,
23 contract, or transaction predicates such pur-
24 chase or sale on the occurrence of a bona fide
25 contingency that might reasonably be expected

1 to affect or be affected by the creditworthiness
2 of a party other than a party to the agreement,
3 contract, or transaction; or

4 “(D) allows for settlement of the swap by
5 delivery of, or by reference to, any security.

6 “(71) SIGNIFICANT SECURITY-BASED DERIVA-
7 TIVES MARKET PARTICIPANT.—The term ‘significant
8 security-based derivatives market participant’
9 means—

10 “(A) any person (other than an investment
11 company registered under the Investment Com-
12 pany Act of 1940) that is engaged in the busi-
13 ness of purchasing or selling one or more secu-
14 rity-based swaps (or security derivatives, as the
15 Commission determines by rule, regulation, or
16 order) for such person’s own account or for oth-
17 ers, or making a market in security-based
18 swaps (or security derivatives, as the Commis-
19 sion determines by rule, regulation, or order),
20 the purchases or sales of which are not solely
21 for the purpose of managing the risk associated
22 with—

23 “(i) an asset that is or is anticipated
24 to be owned, produced, manufactured,
25 processed, or merchandised;

1 “(ii) potential changes in the value of
 2 services to be purchased or provided, or
 3 anticipated to be purchased or provided; or

4 “(iii) a liability incurred or antici-
 5 pated to be incurred by such person that
 6 is not, or is not related to, a security-based
 7 swap; or

8 “(B) any other person designated by the
 9 Commission, by rule, regulation, or order, after
 10 consultation with the Commodity Futures Trad-
 11 ing Commission, as necessary or appropriate in
 12 the public interest, the protection of investors,
 13 or in furtherance of the purposes of this title.

14 “(72) TRADE REPOSITORY.—The term ‘trade
 15 repository’ means any person that collects, cal-
 16 culates, processes, or prepares information with re-
 17 spect to transactions or positions in security-based
 18 swaps or security derivatives by the Commission
 19 under section 17C(d)(1)(A)(ii).”.

20 (b) DEFINITIONS UNDER THE SECURITIES ACT OF
 21 1933.—Section 2(a) of the Securities Act of 1933 (15
 22 U.S.C. 77b(a)) is amended—

23 (1) in paragraph (1), by inserting “security-
 24 based swap,” after “security future,”;

1 (2) in paragraph (3), by adding at the end the
 2 following: “Any offer or sale of a security-based
 3 swap (or other security derivative as the Commission
 4 determines by rule or regulation) by or on behalf of
 5 the issuer of the securities upon which such security-
 6 based swap or security derivative is based or is ref-
 7 erenced, an affiliate of the issuer, or an underwriter,
 8 shall constitute a contract for sale of, sale of, offer
 9 for sale, or offer to sell such securities.”; and

10 (3) by adding at the end the following:

11 “(17) The terms ‘derivative’, ‘swap’, ‘security
 12 derivative’ and ‘security-based swap’ have the same
 13 meanings as in paragraphs (65), (66), (69), and
 14 (70), respectively, of section 3(a) of the Securities
 15 Exchange Act of 1934.

16 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
 17 rity-based swap, shall be deemed to mean the execu-
 18 tion, termination (prior to its scheduled maturity
 19 date), assignment, exchange, or similar transfer or
 20 conveyance of, or extinguishing of rights or obliga-
 21 tions under, a security-based swap, as the context
 22 may require.”.

23 **SEC. 102. RATIONALIZATION OF FINANCIAL PRODUCT**
 24 **OVERSIGHT.**

25 (a) REPEAL OF SWAP AGREEMENT EXCLUSION.—

1 (1) REPEAL OF LAWS.—The following provi-
2 sions of law are repealed:

3 (A) Sections 206A, 206B, and 206C of the
4 Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

5 (B) Section 2A of the Securities Act of
6 1933 (15 U.S.C. 77b–1).

7 (C) Section 17(d) of the Securities Act of
8 1933 (15 U.S.C. 77q(d)).

9 (D) Section 3A of the Securities Exchange
10 Act of 1934 (15 U.S.C. 78c–1).

11 (E) Section 9(i) of the Securities Exchange
12 Act of 1934 (15 U.S.C. 78i(i)).

13 (F) Section 15(i) of the Securities Ex-
14 change Act of 1934 (15 U.S.C. 78o(i)), as
15 added by section 303(f) of the Commodity Fu-
16 tures Modernization Act of 2000 (Public Law
17 106–554; 114 Stat. 2763A–455).

18 (G) Section 16(g) of the Securities Ex-
19 change Act of 1934 (15 U.S.C. 78p(g)).

20 (H) Section 20(f) of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78t(f)).

22 (I) Section 21A(g) of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78u–1(g)).

24 (2) CONFORMING AMENDMENT TO THE SECURI-
25 TIES ACT OF 1933.—Section 17(a) of the Securities

1 Act of 1933 (15 U.S.C. 77q(a)) is amended by strik-
 2 ing “or any security-based swap agreement (as de-
 3 fined in section 206B of the Gramm-Leach-Bliley
 4 Act)”.

5 (3) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Ex-
 6 change Act of 1934 (15 U.S.C. 78a et seq.) is
 7 amended—
 8

9 (A) in section 9(a) (15 U.S.C. 78i(a))—

10 (i) in paragraph (1)—

11 (I) by striking “For the” and in-
 12 serting “for the”; and

13 (II) by striking the period at the
 14 end and inserting a semicolon; and

15 (ii) by striking paragraphs (2)
 16 through (5) and inserting the following:

17 “(2) to effect, alone or with 1 or more other
 18 persons, a series of transactions in any security reg-
 19 istered on a national securities exchange or in con-
 20 nection with any security-based swap (or security de-
 21 rivative, as the Commission determines by rule, reg-
 22 ulation, or order) with respect to such security cre-
 23 ating actual or apparent active trading in such secu-
 24 rity, or raising or depressing the price of such secu-

1 rity, for the purpose of inducing the purchase or sale
2 of such security by others;

3 “(3) if a broker or dealer, or other person sell-
4 ing or offering for sale or purchasing or offering to
5 purchase the security to induce the purchase or sale
6 of any security registered on a national securities ex-
7 change or any security-based swap (or security de-
8 rivative, as the Commission determines by rule, reg-
9 ulation, or order) with respect to such security by
10 the circulation or dissemination in the ordinary
11 course of business of information to the effect that
12 the price of any such security will or is likely to rise
13 or fall because of market operations of any 1 or
14 more persons conducted for the purpose of raising or
15 depressing the price of such security;

16 “(4) if a broker or dealer, or the person selling
17 or offering for sale or purchasing or offering to pur-
18 chase the security, to make, regarding any security
19 registered on a national securities exchange or any
20 security-based swap (or security derivative, as the
21 Commission determines by rule, regulation, or order)
22 with respect to such security, for the purpose of in-
23 ducing the purchase or sale of such security or such
24 security-based swap (or security derivative, as the
25 Commission determines by rule, regulation, or

1 order), any statement which was, at the time and in
 2 the light of the circumstances under which it was
 3 made, false or misleading with respect to any mate-
 4 rial fact, and which the broker, dealer, or such per-
 5 son knew or had reasonable grounds to believe was
 6 false or misleading;

7 “(5) for a consideration, received directly or in-
 8 directly from a broker or dealer, or other person sell-
 9 ing or offering for sale or purchasing or offering to
 10 purchase the security, to induce the purchase of any
 11 security registered on a national securities exchange
 12 or any security-based swap (or security derivative, as
 13 the Commission determines by rule, regulation, or
 14 order) with respect to such security by the circula-
 15 tion or dissemination of information to the effect
 16 that the price of any such security will or is likely
 17 to rise or fall because of the market operations of
 18 any one or more persons conducted for the purpose
 19 of raising or depressing the price of such security;
 20 or”;

21 (B) in section 10(b) (15 U.S.C. 78j(b))—

22 (i) by striking “or any securities-
 23 based swap agreement (as defined in sec-
 24 tion 206B of the Gramm-Leach-Bliley
 25 Act),”; and

1 (ii) by striking “Rules promulgated
 2 under subsection (b)” and all that follows
 3 through “as they apply to securities”;

4 (C) in section 15(c)(1) (15 U.S.C.
 5 78o(c)(1))—

6 (i) in subparagraph (A) by striking “,
 7 or any security-based swap agreement (as
 8 defined in section 206B of the Gramm-
 9 Leach-Bliley Act),”; and

10 (ii) in each of subparagraphs (B) and
 11 (C), by striking “swap agreement (as de-
 12 fined in section 206B of the Gramm-
 13 Leach-Bliley Act)” each place that term
 14 appears and inserting “swap”;

15 (D) in section 16(a)(2)(C) (15 U.S.C.
 16 78p(a)(2)(C)), by striking “swap agreement (as
 17 defined in section 206(b) of the Gramm-Leach-
 18 Bliley Act)” and inserting “swap (or security
 19 derivative, as the Commission determines by
 20 rule, regulation, or order)”;

21 (E) in section 16(a)(3)(B) (15 U.S.C.
 22 78p(a)(3)(B)), by striking “security-based swap
 23 agreement” and inserting “swap (or security
 24 derivative, as the Commission determines by
 25 rule, regulation, or order)”;

1 (F) in section 16(b) (15 U.S.C. 78p(b))—

2 (i) by striking “(as defined in section
3 206B of the Gramm-Leach-Bliley Act)”
4 each place that term appears and inserting
5 “; (or security derivative, as the Commis-
6 sion determines by rule, regulation, or
7 order)”; and

8 (ii) by striking “swap agreement”
9 each place that term appears and inserting
10 “swap (or security derivative, as the Com-
11 mission determines by rule, regulation, or
12 order)”; and

13 (G) in section 20(d) (15 U.S.C. 78t(d)), by
14 striking “or security-based swap agreement (as
15 defined in section 206B of the Gramm-Leach-
16 Bliley Act) with respect to such security” and
17 inserting “; security futures product or swap”;
18 and

19 (H) in section 21A(a)(1) (15 U.S.C. 78u-
20 1(a)(1)), by striking “or security-based swap
21 agreement (as defined in section 206B of the
22 Gramm-Leach-Bliley Act)”.

23 (b) RATIONALIZATION OF SECURITY FUTURES OVER-
24 SIGHT.—

1 (1) AMENDMENTS TO THE SECURITIES EX-
2 CHANGE ACT OF 1934.—The Securities Exchange Act
3 of 1934 (15 U.S.C. 78a et seq.) is amended—

4 (A) in section 3(a) of (15 U.S.C. 78c(a)),
5 by striking paragraph (55) and inserting the
6 following:

7 “(55) The term ‘security future’—

8 “(A) means a contract of sale for future
9 delivery of a security or an index of securities,
10 including any interest therein or based on the
11 value thereof, or based on any financial, eco-
12 nomic, or commercial occurrence, extent of an
13 occurrence, contingency, or consequence that is
14 related to or based on a security, an interest in
15 a security, an issuer of a security, or group or
16 index of securities, or interests in securities or
17 issuers of securities, or based on the value of
18 any of the foregoing, other than an exempted
19 security under paragraph (12), as in effect on
20 the date of enactment of the Futures Trading
21 Act of 1982 (other than a municipal security,
22 under paragraph (29), as in effect on the date
23 of enactment of the Futures Trading Act of
24 1982); and

1 “(B) does not include any security-based
2 swap.”;

3 (B) in section 6 (15 U.S.C. 78f)—

4 (i) by striking subsections (g), (i), and
5 (k);

6 (ii) by redesignating subsections (h)
7 and (j) as subsections (g) and (h), respec-
8 tively; and

9 (iii) in subsection (g), as so redesign-
10 nated—

11 (I) in paragraph (2)—

12 (aa) by striking “(A)”; and

13 (bb) by striking “and (B)
14 meet the criteria specified in sec-
15 tion 2(a)(1)(D)(i) of the Com-
16 modity Exchange Act”;

17 (II) in paragraph (3)(A), by
18 striking “security of a narrow-based
19 security” and inserting “of an”;

20 (III) in paragraph (3)(D), by
21 striking “and the Commodity Futures
22 Trading Commission jointly deter-
23 mine” and inserting “determines”;

24 (IV) in paragraph (3)(G), by
25 striking “the prohibition against dual

1 trading in section 4j of the Com-
 2 modity Exchange Act (7 U.S.C. 6j)
 3 and the rules and regulations there-
 4 under or”;

5 (V) in paragraph (4)(A), by
 6 striking “and the Commodity Futures
 7 Trading Commission, by rule, regula-
 8 tion, or order, may jointly” and in-
 9 serting “may, by rule, regulation, or
 10 order,”;

11 (VI) in paragraph (4)(B), by
 12 striking “and the Commodity Futures
 13 Trading Commission, by order, may
 14 jointly” and inserting “may, by
 15 order,”;

16 (VII) in paragraph (6)—

17 (aa) by striking “and the
 18 Commodity Futures Trading
 19 Commission”;

20 (bb) by striking “jointly”;
 21 and

22 (cc) by striking “and the
 23 Commodity Exchange Act”; and

24 (VIII) in paragraph (7)—

1 (aa) by striking subpara-
 2 graph (A) and inserting the fol-
 3 lowing:

4 “(A) Notwithstanding paragraph (2), until
 5 the compliance date, a national securities ex-
 6 change or national securities association that is
 7 registered pursuant to section 15A(a) may
 8 trade a security futures product that does not
 9 conform with any listing standard promulgated
 10 to meet the requirement specified in subpara-
 11 graph (E) of paragraph (3).”; and

12 (bb) in subparagraph (B),
 13 by striking “and the Commodity
 14 Futures Trading Commission
 15 shall jointly” and inserting
 16 “shall”;

17 (C) in section 7 (15 U.S.C. 78g)—

18 (i) in subsection (c)(2)(A)(ii), by
 19 striking “and the Commodity Futures
 20 Trading Commission shall jointly” and in-
 21 serting “shall”;

22 (ii) in subsection (c)(2)(A), by strik-
 23 ing “and the Commodity Futures Trading
 24 Commission have not jointly” and inserting
 25 “has not”; and

1 (iii) in subsection (c)(2)(B)—

2 (I) by striking “and the Com-
3 modity Futures Trading Commission
4 shall jointly” and inserting “shall”;
5 and

6 (II) by striking “and the Com-
7 modity Futures Trading Commission
8 jointly deem” and inserting “deems”;

9 (D) in section 11A (15 U.S.C. 78k–1), by
10 striking subsection (e);

11 (E) in section 12(k) (15 U.S.C. 78l(k))—

12 (i) in paragraph (1), by striking “If
13 the actions described in subparagraph (A)
14 or (B) involve a security futures product,
15 the Commission shall consult with and con-
16 sider the views of the Commodity Futures
17 Trading Commission.”; and

18 (ii) in paragraph (2)(B), by striking
19 “If the actions described in subparagraph
20 (A) involve a security futures product, the
21 Commission shall consult with and con-
22 sider the views of the Commodity Futures
23 Trading Commission.”;

24 (F) in section 15 (15 U.S.C. 78o)—

1 (i) in subsection (b), by striking para-
 2 graphs (11) and (12); and

3 (ii) in subsection (c)(3)—

4 (I) by striking “(A) No” and in-
 5 serting “No”; and

6 (II) by striking subparagraph
 7 (B);

8 (G) in section 15A (15 U.S.C. 78o–3), by
 9 striking subsections (k), (l), and (m);

10 (H) in section 17(b) (15 U.S.C. 78q(b))—

11 (i) in paragraph (1)—

12 (I) by striking “(1)” and all that
 13 follows through “All records” and in-
 14 serting “All records”;

15 (II) by striking “of a—” and all
 16 that follows through “(A) registered”
 17 and inserting “of a registered”; and

18 (III) by striking “; or” and all
 19 that follows through the end of sub-
 20 paragraph (B) and inserting a period;
 21 and

22 (ii) by striking paragraphs (2)
 23 through (4);

24 (I) in section 17A(b) (15 U.S.C. 78q–
 25 1(b))—

- 1 (i) by striking paragraph (7); and
- 2 (ii) by redesignating paragraph (8) as
- 3 paragraph (7);
- 4 (J) in section 19 (15 U.S.C. 78s)—
- 5 (i) in subsection (b)—
- 6 (I) by striking paragraphs (7)
- 7 and (9); and
- 8 (II) by redesignating paragraph
- 9 (8) as paragraph (7); and
- 10 (ii) in subsection (d), by striking
- 11 paragraph (3);
- 12 (K) in section 21 (15 U.S.C. 78u), by
- 13 striking subsection (i); and
- 14 (L) in section 28(e) (15 U.S.C. 78bb(e)),
- 15 by striking paragraph (4).

16 (2) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—The Securities Act of 1933
 17 (15 U.S.C. 77 et seq.) is amended—

18 (A) in section 2(a) (15 U.S.C. 77b(a)), by
 19 striking paragraph (16) and inserting the fol-
 20 lowing:

21 “(16) The terms ‘security future’ and ‘security
 22 futures product’ have the same meanings as in sec-
 23 tions 3(a)(55) and 3(a)(56), respectively, of the Se-
 24 curities Exchange Act of 1934.”; and

1 (B) in section 3(a)(14)(A) (15 U.S.C.
 2 77c(a)(14)(A)), by striking “or exempt from
 3 registration under subsection (b)(7) of such sec-
 4 tion 17A”.

5 (3) CONFORMING AMENDMENT TO THE INVEST-
 6 MENT COMPANY ACT OF 1940.—Section 2(a)(52) of
 7 the Investment Company Act of 1940 (15 U.S.C.
 8 80a–2(a)(52)) is amended to read as follows:

9 “(52) The term ‘security future’ has the same
 10 meaning as in section 3(a)(55) of the Securities Ex-
 11 change Act of 1934.”.

12 (4) CONFORMING AMENDMENT TO THE INVEST-
 13 MENT ADVISERS ACT OF 1940.—Section 202(a)(27)
 14 of the Investment Advisers Act of 1940 (15 U.S.C.
 15 80b–2(a)(27)) is amended to read as follows:

16 “(27) The term ‘security future’ has the same
 17 meaning as in section 3(a)(55) of the Securities Ex-
 18 change Act of 1934.”.

19 (5) CONFORMING AMENDMENTS TO THE SECU-
 20 RITIES INVESTOR PROTECTION ACT OF 1970.—The
 21 Securities Investor Protection Act of 1970 (15
 22 U.S.C. 78aaa et seq.) is amended—

23 (A) in section 3(a)(2)(A) (15 U.S.C.
 24 78ccc(a)(2)(A))—

- 1 (i) in clause (i), by inserting “and”
 2 after the semicolon at the end;
 3 (ii) in clause (ii), by striking “; and”
 4 and inserting a period; and
 5 (iii) by striking clause (iii); and
 6 (B) in section 16(14) (15 U.S.C.
 7 78lll(14)), by striking “section 3(a)(55)(A)”
 8 and inserting “section 3(a)(55)”.

9 (c) CLARIFICATION OF THE STATUS OF EVENT CON-
 10 TRACTS.—

11 (1) AMENDMENTS TO THE SECURITIES EX-
 12 CHANGE ACT OF 1934.—Section (3)(a)(10) of the Se-
 13 curities Exchange Act of 1934 (15 U.S.C.
 14 78c(a)(10) is amended—

15 (A) by striking “term ‘security’ means any
 16 note” and inserting the following: “term ‘secu-
 17 rity’—

18 “(A) means—

19 “(i) any note”;

20 (B) by striking “or any certificate” and in-
 21 serting the following: “; or

22 “(ii) any certificate”; and

23 (C) by striking “any of the foregoing, but
 24 shall not” and inserting the following: “any se-
 25 curity described in clause (i); or

1 “(iii) any agreement, contract, or
 2 transaction that is associated with a finan-
 3 cial, economic, or commercial occurrence,
 4 extent of an occurrence, contingency, or
 5 consequence that is related to or based on
 6 a security, an interest in a security, an
 7 issuer of a security, or group or index of
 8 securities, or interests in securities or
 9 issuers of securities, or based on the value
 10 of any of the foregoing or any security de-
 11 scribed in clause (i) or (ii); and
 12 “(B) does not”.

13 (2) AMENDMENTS TO THE SECURITIES ACT OF
 14 1933.—Section (2)(a)(1) of the Securities Act of
 15 1933 (15 U.S.C. 77b(a)(1)) is amended—

16 (A) by striking “means any note” and in-
 17 serting the following: “means—

18 “(A) any note”;

19 (B) by striking “, or any certificate” and
 20 inserting the following: “; or

21 “(B) any certificate”; and

22 (C) by striking “any of the foregoing.” and
 23 inserting the following: “any security described
 24 in subparagraph (A); or

1 “(C) any agreement, contract, or trans-
 2 action that is associated with a financial, eco-
 3 nomic, or commercial occurrence, extent of an
 4 occurrence, contingency, or consequence that is
 5 related to or based on a security, an interest in
 6 a security, an issuer of a security, or group or
 7 index of securities, or interests in securities or
 8 issuers of securities, or based on the value of
 9 any of the foregoing or any security described
 10 in subparagraph (A) or (B).”.

11 **SEC. 103. REQUIRED CLEARING OF STANDARDIZED DE-**
 12 **RIVATIVES THROUGH CENTRAL COUNTER-**
 13 **PARTIES AND THE USE OF TRADE REPOSI-**
 14 **TORIES.**

15 The Securities Exchange Act of 1934 (15 U.S.C. 78a
 16 et seq.) is amended by inserting after section 17B (15
 17 U.S.C. 78q-2) the following new section:

18 **“SEC. 17C. USE OF CLEARING AGENCIES AND TRADE RE-**
 19 **POSITORIES FOR DERIVATIVES TRANS-**
 20 **ACTIONS.**

21 “(a) FINDINGS.—Congress finds that—

22 “(1) the proliferation of over-the-counter secu-
 23 rity-based swaps poses unacceptable risks to the fi-
 24 nancial system;

1 “(2) clearing standardized security-based swaps
 2 through well-regulated central counterparties would
 3 reduce systemic risk in the financial system;

4 “(3) the markets for standardized security-
 5 based swaps suffer from a lack of reliable and accu-
 6 rate transaction information that is available to the
 7 public, investors, and regulators; and

8 “(4) weaknesses in the regulation of markets
 9 for standardized security-based swaps have detracted
 10 from the efficiency and transparency of trading in
 11 such markets and hampered the surveillance and
 12 oversight of such markets.

13 “(b) PURPOSES.—The purposes of this section are—

14 “(1) to establish well-regulated markets for
 15 standardized security-based swaps to promote effi-
 16 ciency and transparency of trading and enhance the
 17 surveillance and oversight of such markets; and

18 “(2) to promote the public interest, the protec-
 19 tion of investors, and the maintenance of fair and
 20 orderly markets to assure—

21 “(A) the prompt and accurate clearance
 22 and settlement of transactions in standardized
 23 security-based swaps;

1 “(B) the prompt and accurate reporting of
2 transactions in security-based swaps to a trade
3 repository or a registered clearing agency;

4 “(C) the establishment of linked or coordi-
5 nated facilities for clearance and settlement of
6 transactions in securities, securities options,
7 contracts of sale for future delivery and options
8 thereon, commodity options, and derivatives;

9 “(D) availability to the public, investors,
10 and regulators of reliable and accurate
11 quotation and transaction information in secu-
12 rity-based swaps;

13 “(E) economically efficient execution of
14 transactions in security-based swaps; and

15 “(F) fair competition among markets in
16 the trading of security-based swaps.

17 “(c) USE OF DERIVATIVES CLEARING AGENCIES.—

18 “(1) IN GENERAL.—Any person that is a party
19 to a security-based swap (or security derivative, as
20 the Commission determines by rule, regulation, or
21 order) that the Commission determines is ‘standard-
22 ized’ shall submit such instrument for clearing to a
23 registered clearing agency within the period specified
24 by rule of the Commission.

25 “(2) DEFINITION OF ‘STANDARDIZED’.—

1 “(A) IN GENERAL.—The Commission
2 shall, by rule, define the term ‘standardized’ for
3 purposes of this section.

4 “(B) FACTORS.—In defining the term
5 ‘standardized’, the Commission shall—

6 “(i) be consistent with the public in-
7 terest, the protection of investors, the safe-
8 guarding of securities and funds, the main-
9 tenance of fair competition among market
10 participants and among clearing agencies,
11 and the purposes of this section;

12 “(ii)(I) consult with, and consider the
13 views of, the Commodity Futures Trading
14 Commission and the Board of Governors of
15 the Federal Reserve System; and

16 “(II) seek to maintain comparability,
17 to the maximum extent practicable, with
18 the definition of the Commodity Futures
19 Trading Commission of the term ‘stand-
20 ardized’ for purposes of section 4r of the
21 Commodity Exchange Act; and

22 “(iii) to the extent applicable to a par-
23 ticular security-based swap or security de-
24 rivative or class of security-based swaps or
25 security derivatives, consider—

1 “(I) whether a clearing agency is
2 prepared to clear the security-based
3 swap or security derivative, and such
4 clearing agency has in place effective
5 risk management systems;

6 “(II) the availability or ability to
7 facilitate standard documentation of
8 terms of the security-based swap or
9 security derivative;

10 “(III) the liquidity of the secu-
11 rity-based swap or security derivative
12 and its underlying security, security of
13 a reference entity, or group or index
14 thereof;

15 “(IV) the ability to value the se-
16 curity-based swap or security deriva-
17 tive, underlying security, or security
18 of a reference entity, or group or
19 index thereof consistently with an ac-
20 cepted pricing methodology, including
21 the availability of intraday prices; and

22 “(V) such other factors as are
23 consistent with the purposes of this
24 section.

25 “(3) EXEMPTION AUTHORITY.—

1 “(A) IN GENERAL.—The Commission by
 2 rule or order, as the Commission deems nec-
 3 essary or appropriate in the public interest or
 4 for the protection of investors, may condi-
 5 tionally or unconditionally exempt from the re-
 6 quirements of this subsection and the rules
 7 issued under this subsection, any person, trans-
 8 action, or security.

9 “(B) PRIOR CONSULTATION WITH THE
 10 COMMODITY FUTURES TRADING COMMISSION
 11 AND THE BOARD OF GOVERNORS OF THE FED-
 12 ERAL RESERVE SYSTEM.—

13 “(i) CONSULTATION.—Before acting
 14 by rule or order to exempt any person,
 15 transaction, or security from the require-
 16 ments of this subsection or the rules issued
 17 under this subsection, the Commission
 18 shall consult with, and consider the views
 19 of, the Commodity Futures Trading Com-
 20 mission and the Board of Governors of the
 21 Federal Reserve System concerning wheth-
 22 er such exemption is necessary and appro-
 23 priate for the reduction of risk and in the
 24 public interest.

1 “(ii) PROHIBITION ON ISSUANCE.—

2 Not later than 45 days prior to issuing any
3 exemption under this subparagraph, the
4 Commission shall send a notice to the
5 Commodity Futures Trading Commission
6 and the Board of Governors describing
7 such exemption. If either the Commodity
8 Futures Trading Commission or the Board
9 of Governors issues a finding under clause
10 (i) that such an exemption does not meet
11 the standard described in clause (i), the
12 Commission may not issue such exemption.

13 “(iii) DEADLINE.—Any finding by the
14 Commodity Futures Trading Commission
15 or the Board of Governors of the Federal
16 Reserve System shall be made and pro-
17 vided in writing to the Commission not
18 later than 30 days after the date of receipt
19 of notice of a proposed exemption by the
20 Commission.

21 “(iv) NONDELEGATION.—Action by
22 the Commodity Futures Trading Commis-
23 sion or the Board of Governors under this
24 subparagraph may not be delegated.

25 “(d) TRADE REPOSITORIES.—

1 “(1) USE OF TRADE REPOSITORIES.—

2 “(A) IN GENERAL.—Any person that en-
3 ters into or effects a transaction in a security-
4 based swap (or security derivative, as the Com-
5 mission determines by rule, regulation, or
6 order) shall submit such transaction for clear-
7 ing to a registered clearing agency or report
8 such transaction to a trade repository registered
9 in accordance with this subsection within the
10 period specified by rule of the Commission.

11 “(B) REQUIRED REPORTING AUTHOR-
12 IZED.—The Commission may, by rule, require
13 any person to report to any registered clearing
14 agency and registered trade repository such
15 transaction information as the Commission
16 deems necessary or appropriate, to permit such
17 clearing agency or trade repository to meet the
18 purposes of this section.

19 “(C) EXEMPTION AUTHORITY.—The Com-
20 mission by rule, regulation, or order, as the
21 Commission deems consistent with the public
22 interest or the protection of investors, may con-
23 ditionally or unconditionally exempt from the
24 requirements of this paragraph and the rules
25 issued under this paragraph any person, trans-

1 action, or security that enters into or effects a
2 transaction in a security or class of securities.

3 “(2) REGISTRATION.—A trade repository may
4 register for purposes of this subsection by filing with
5 the Commission an application in such form as the
6 Commission, by rule, may prescribe, containing the
7 rules of the trade repository and such other informa-
8 tion and documentation as the Commission, by rule,
9 may prescribe as necessary or appropriate in the
10 public interest, for the protection of investors, or for
11 the prompt and accurate collection, calculation, proc-
12 essing, and preparation of information regarding se-
13 curity-based swaps or security derivatives.

14 “(3) COMMISSION PROCEDURES FOR APPLICA-
15 TIONS.—

16 “(A) NOTICE.—On the filing of an applica-
17 tion for registration pursuant to paragraph (2),
18 the Commission shall publish notice of the filing
19 and afford interested persons an opportunity to
20 submit written data, views, and arguments con-
21 cerning such application.

22 “(B) ACTIONS.—Not later than 90 days
23 after the date of publication of a notice under
24 subparagraph (A) (or within such longer period

1 as to which the applicant consents), the Com-
2 mission shall—

3 “(i) by order, grant such registration;
4 or

5 “(ii) institute proceedings to deter-
6 mine whether registration should be de-
7 nied.

8 “(C) PROCEDURE FOR DENIALS.—

9 “(i) IN GENERAL.—Proceedings insti-
10 tuted under subparagraph (B)(ii) shall—

11 “(I) include notice of the grounds
12 for denial under consideration and
13 provide an opportunity for a hearing;
14 and

15 “(II) be concluded not later than
16 180 days after the date of publication
17 of notice of the filing of the applica-
18 tion for registration under subpara-
19 graph (A).

20 “(ii) ACTIONS.—At the conclusion of
21 such proceedings, the Commission, by
22 order, shall grant or deny the subject reg-
23 istration.

1 “(iii) EXTENSIONS.—The Commission
 2 may extend the time for conclusion of the
 3 proceedings under subparagraph (C) for—

4 “(I) not longer than an addi-
 5 tional 60 days, if the Commission
 6 finds good cause for such extension
 7 and publishes its reasons for so find-
 8 ing; or

9 “(II) for such longer period as to
 10 which the applicant consents.

11 “(D) STANDARDS FOR GRANTING REG-
 12 ISTRATION.—The Commission shall grant the
 13 registration of a trade repository for purposes
 14 of this section if the Commission finds that the
 15 trade repository is so organized, and has the ca-
 16 pacity to be able—

17 “(i) to assure the prompt, accurate,
 18 and reliable performance of its functions as
 19 a trade repository;

20 “(ii) to comply with the provisions of
 21 this title (including rules and regulations
 22 issued under this title); and

23 “(iii) to carry out the functions of a
 24 trade repository in a manner consistent
 25 with the purposes of this section.

1 “(E) STANDARDS FOR DENIAL.—The
 2 Commission shall deny the registration of a
 3 trade repository if the Commission does not
 4 make the findings described in subparagraph
 5 (D).

6 “(4) WITHDRAWAL OF REGISTRATION.—

7 “(A) IN GENERAL.—A registered trade re-
 8 pository may, upon such terms and conditions
 9 as the Commission deems necessary or appro-
 10 priate in the public interest or for the protec-
 11 tion of investors, withdraw from registration
 12 under this section by filing a written notice of
 13 withdrawal with the Commission.

14 “(B) CANCELLATION.—If the Commission
 15 finds that any trade repository is no longer in
 16 existence or has ceased to do business in the ca-
 17 pacity specified in its application for registra-
 18 tion under this section, the Commission, by
 19 order, shall cancel the registration.

20 “(5) ACCESS TO TRADE REPOSITORY SERV-
 21 ICES.—

22 “(A) NOTICE OF PROHIBITION OR LIMITA-
 23 TION.—

24 “(i) IN GENERAL.—If any registered
 25 trade repository prohibits or limits any

1 person in respect of access to services of-
 2 fered, directly or indirectly, by the trade
 3 repository, the registered trade repository
 4 shall promptly file notice of the prohibition
 5 with the Commission, in such form and
 6 containing such information as the Com-
 7 mission, by rule, may prescribe as nec-
 8 essary or appropriate in the public interest
 9 or for the protection of investors.

10 “(ii) REVIEW BY COMMISSION.—Any
 11 prohibition or limitation on access to serv-
 12 ices with respect to which a registered
 13 trade repository is required by this sub-
 14 paragraph to file notice shall be subject to
 15 review by the Commission, on its own mo-
 16 tion or upon application by any person ag-
 17 grievied thereby, filed not later than 30
 18 days after such notice has been filed with
 19 the Commission and received by such ag-
 20 grievied person, or within such longer pe-
 21 riod as the Commission may determine.

22 “(iii) STAYS.—Application to the
 23 Commission for review, or the institution
 24 of review by the Commission on its own
 25 motion, shall not operate as a stay of a

1 prohibition or limitation described in clause
2 (i), unless the Commission otherwise or-
3 ders, summarily or after notice and oppor-
4 tunity for hearing on the question of a stay
5 (which hearing may consist solely of the
6 submission of affidavits or presentation of
7 oral arguments).

8 “(iv) EXPEDITED PROCEDURE.—The
9 Commission shall establish for appropriate
10 cases an expedited procedure for consider-
11 ation and determination of the question of
12 a stay.

13 “(B) STANDARDS OF REVIEW.—In any
14 proceeding to review the prohibition or limita-
15 tion of any person in respect of access to serv-
16 ices offered by a registered trade repository—

17 “(i) if the Commission finds after no-
18 tice and opportunity for hearing, that such
19 prohibition or limitation is consistent with
20 the provisions of this title and the rules
21 and regulations thereunder, and that such
22 person has not been discriminated against
23 unfairly, the Commission, by order, shall
24 dismiss the proceeding; and

1 “(ii) if the Commission does not make
2 any such finding, or if it finds that such
3 prohibition or limitation imposes any bur-
4 den on competition that is not necessary or
5 appropriate in furtherance of the purposes
6 of this title, the Commission, by order,
7 shall set aside the prohibition or limitation
8 and require the registered trade repository
9 to permit such person access to the serv-
10 ices offered by the registered trade reposi-
11 tory to which the prohibition or limitation
12 applied.

13 “(6) ADMINISTRATIVE PROCEEDING AUTHOR-
14 ITY.—If the Commission finds, on the record after
15 notice and opportunity for hearing, that such action
16 is necessary or appropriate in the public interest, for
17 the protection of investors, or otherwise in further-
18 ance of the purposes of this title and that a reg-
19 istered trade repository has violated or is unable to
20 comply with any provision of this title or the rules
21 or regulations thereunder, the Commission, by order,
22 may—

23 “(A) censure or place limitations upon the
24 activities, functions, or operations of any reg-
25 istered trade repository; or

1 “(B) suspend for a period of not longer
2 than 12 months or revoke the registration of
3 any such trade repository.

4 “(7) RULEMAKING AUTHORITY.—No registered
5 trade repository shall, directly or indirectly, engage
6 in any activity as a trade repository in contravention
7 of such rules and regulations as the Commission
8 may prescribe as appropriate in the public interest,
9 for the protection of investors, or otherwise in fur-
10 therance of the purposes of this title, including to
11 assure that all persons may obtain on terms that are
12 fair and reasonable and not unreasonably discrimi-
13 natory such transaction and position information for
14 security-based swaps and security derivatives as is
15 disseminated by any clearing agency or trade reposi-
16 tory.

17 “(8) CONSULTATION.—

18 “(A) IN GENERAL.—Prior to adopting any
19 rules applicable to trade repositories pursuant
20 to section 17(a), the Commission shall consult
21 with, and shall consider the views of, the Com-
22 modity Futures Trading Commission.

23 “(B) COMPARABILITY.—The Commission
24 and the Commodity Futures Trading Commis-
25 sion shall seek to maintain comparability, to the

1 maximum extent practicable, of their respective
2 recordkeeping and reporting requirements for
3 trade repositories.

4 “(e) TIMING.—The Commission may, by rule, specify
5 the date by which persons are required—

6 “(1) to submit transactions in standardized se-
7 curity-based swaps and security derivatives for clear-
8 ing to a clearing agency pursuant to subsection (c);
9 and

10 “(2) to submit transactions in security-based
11 swaps and security derivatives for clearing to a
12 clearing agency or report transactions in such in-
13 struments to a registered trade repository pursuant
14 to subsection (d).

15 “(f) COLLECTION, CONSOLIDATION, AND DISSEMINA-
16 TION OF INFORMATION ON TRANSACTIONS AND POSI-
17 TIONS IN SECURITY-BASED SWAPS AND SECURITY DE-
18 RIVATIVES.—

19 “(1) COMMISSION ACTION REQUIRED.—The
20 Commission shall, consistent with the public inter-
21 est, the protection of investors, the maintenance of
22 fair and orderly markets, and the purposes of this
23 section, use the authority of the Commission under
24 this title to facilitate—

1 “(A) the collection, consolidation, and dis-
 2 semination of information on transactions and
 3 positions in security-based swaps and security
 4 derivatives; and

5 “(B) the establishment of coordinated fa-
 6 cilities for the consolidation of information on
 7 transactions and positions in security-based
 8 swaps and security derivatives.

9 “(2) ACTIONS REQUIRED OF REGISTERED ENTI-
 10 TIES.—The Commission, by rule, regulation, or
 11 order is authorized to require each clearing agency
 12 that clears or proposes to clear transactions in secu-
 13 rity-based swaps and security derivatives, and each
 14 trade repository registered or applying to become
 15 registered under this section, in such form and fre-
 16 quency as the Commission shall prescribe as nec-
 17 essary or appropriate in the public interest, for the
 18 protection of investors, or otherwise in furtherance
 19 of the purposes of this title—

20 “(A) to disseminate certain transaction or
 21 position information in security-based swaps
 22 and security derivatives; and

23 “(B) to assure the prompt, accurate, reli-
 24 able, and fair collection, processing, distribu-
 25 tion, and publication of information with re-

1 spect to transactions and positions, as appro-
 2 priate, cleared by such clearing agency or re-
 3 ported to such registered trade repository.”.

4 **SEC. 104. PRUDENTIAL SUPERVISION AND REGULATION OF**
 5 **SIGNIFICANT SECURITY-BASED DERIVATIVES**
 6 **MARKET PARTICIPANTS AND INCENTIVES**
 7 **FOR TRADING ON REGULATED EXCHANGES.**

8 (a) REGULATION OF SIGNIFICANT SECURITY-BASED
 9 DERIVATIVES MARKET PARTICIPANTS.—The Securities
 10 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended
 11 by inserting after section 15E (15 U.S.C. 78o–7) the fol-
 12 lowing:

13 **“SEC. 15F. REGULATION OF SIGNIFICANT SECURITY-BASED**
 14 **DERIVATIVES MARKET PARTICIPANTS.**

15 “(a) REGISTRATION BY SIGNIFICANT SECURITY-
 16 BASED DERIVATIVES MARKET PARTICIPANTS.—It shall
 17 be unlawful for any significant security-based derivatives
 18 market participant to make use of the mails or any means
 19 or instrumentality of interstate commerce to effect any
 20 transactions in, or to induce or attempt to induce the pur-
 21 chase or sale of, any security-based swap (or security de-
 22 rivative, as the Commission determines by rule, regulation,
 23 or order), unless such significant security-based deriva-
 24 tives market participant has registered in accordance with
 25 subsection (b).

1 “(b) MANNER OF REGISTRATION OF SIGNIFICANT
 2 SECURITY-BASED DERIVATIVES MARKET PARTICI-
 3 PANTS.—

4 “(1) IN GENERAL.—A significant security-based
 5 derivatives market participant may register for pur-
 6 poses of this section by filing with the Commission
 7 an application for registration, in such form and
 8 containing such information and documentation con-
 9 cerning such significant security-based derivatives
 10 market participant and any persons associated with
 11 such significant security-based derivatives market
 12 participant as the Commission, by rule, regulation,
 13 or order may prescribe as necessary or appropriate
 14 in the public interest or for the protection of inves-
 15 tors.

16 “(2) COMMISSION ACTION.—

17 “(A) TIMING.—Not later than 45 days
 18 after the date of filing of an application under
 19 paragraph (1) (or within such longer period as
 20 to which the applicant consents), the Commis-
 21 sion shall—

22 “(i) by order, grant registration; or

23 “(ii) institute proceedings to deter-
 24 mine whether registration should be de-
 25 nied.

1 “(B) COMMISSION PROCEEDINGS.—Pro-
2 ceedings described in subparagraph (A)(ii)
3 shall—

4 “(i) include notice of the grounds for
5 denial under consideration and opportunity
6 for hearing; and

7 “(ii) be concluded within 120 days of
8 the date of the filing of the application for
9 registration.

10 “(C) GRANT OR DENIAL.—At the conclu-
11 sion of proceedings under this paragraph, the
12 Commission, by order, shall grant or deny any
13 application for registration.

14 “(D) EXTENSION AUTHORIZED.—The
15 Commission may extend the time for the con-
16 clusion of proceedings under this paragraph for
17 not longer than an additional 90 days if the
18 Commission finds good cause for such extension
19 and publishes its reasons for so finding, or for
20 such longer period as to which the applicant
21 consents.

22 “(E) CONDITIONS OF GRANT OR DENIAL
23 OF APPLICATIONS.—The Commission shall—

24 “(i) grant an application for registra-
25 tion of a significant security-based deriva-

1 tives market participant, if the Commission
 2 finds that the requirements of this section
 3 are satisfied; and

4 “(ii) deny such registration, if the
 5 Commission does not make a finding de-
 6 scribed in clause (i), or finds that if the
 7 applicant were so registered, its registra-
 8 tion would be subject to suspension or rev-
 9 ocation under subsection (e).

10 “(3) WITHDRAWAL AUTHORIZED.—Any person
 11 that has filed an application pursuant to paragraph
 12 (1) may, upon such terms and conditions as the
 13 Commission deems necessary or appropriate in the
 14 public interest, for the protection of investors, or
 15 otherwise in furtherance of the purposes of this title,
 16 withdraw such application by filing a written with-
 17 drawal with the Commission.

18 “(c) BUSINESS CONDUCT REQUIREMENTS.—

19 “(1) PROHIBITION.—It shall be unlawful for
 20 any significant security-based derivatives market
 21 participant and such other persons as the Commis-
 22 sion may determine, by rule, regulation, or order, to
 23 make use of the mails or any means or instrumen-
 24 tality of interstate commerce to effect any trans-
 25 action in, or to induce or attempt to induce the pur-

1 chase or sale of, any security-based swap (or secu-
 2 rity derivative, as the Commission determines by
 3 rule, regulation, or order), unless such person com-
 4 plies with such business conduct requirements as the
 5 Commission and the Commodity Futures Trading
 6 Commission, in consultation with the appropriate
 7 regulatory authorities, may jointly prescribe, by rule,
 8 regulation, or order, as necessary or appropriate in
 9 the public interest, for the protection of investors,
 10 and otherwise in furtherance of the purposes of this
 11 title.

12 “(2) CONTENT.—Business conduct require-
 13 ments under paragraph (1) shall—

14 “(A) establish the standard of care re-
 15 quired for a significant security-based deriva-
 16 tives market participant and such other persons
 17 to verify that any counterparty meets the eligi-
 18 bility standards for an eligible contract partici-
 19 pant or qualified institutional buyer;

20 “(B) require disclosure by the significant
 21 security-based derivatives market participant
 22 and such other persons to any counterparty to
 23 the transaction of—

24 “(i) material product-specific informa-
 25 tion about the risks and characteristics of

1 the security-based swap (or security deriva-
2 tive, as the Commission determines by
3 rule, regulation, or order);

4 “(ii) the source and amount of any
5 fees or other material remuneration that
6 the significant security-based derivatives
7 market participant and such other persons
8 would directly or indirectly expect to re-
9 ceive in connection with the security-based
10 swap (or security derivative, as the Com-
11 mission determines by rule, regulation, or
12 order); and

13 “(iii) any other material incentives or
14 conflicts of interest that the significant se-
15 curity-based derivatives market participant
16 and such other persons may have in con-
17 nection with the security-based swap (or
18 security derivative, as the Commission de-
19 termines by rule, regulation, or order);

20 “(C) establish a minimum standard of con-
21 duct for a significant security-based derivatives
22 market participant and such other persons with
23 respect to any counterparty, other than a quali-
24 fied institutional buyer, for—

1 “(i) providing disclosure of the gen-
2 eral risks and characteristics of any secu-
3 rity-based swap (or security derivative, as
4 the Commission determines by rule, regula-
5 tion, or order);

6 “(ii) communicating in a fair and bal-
7 anced manner based on principles of fair
8 dealing and good faith;

9 “(iii) assessing the appropriateness of
10 any security-based swap (or security deriv-
11 ative, as the Commission determines by
12 rule, regulation, or order) for the
13 counterparty, except that, if the
14 counterparty is an eligible contract partici-
15 pant, the significant security-based deriva-
16 tives market participant may rely on a rep-
17 resentation described in clause (iv)(VI)
18 that the transaction is appropriate for such
19 counterparty; and

20 “(iv) with respect to a counterparty
21 that is an eligible contract participant
22 within the meaning of subclause (I) or (II)
23 of section 3(a)(67)(A)(vii), having a rea-
24 sonable basis to believe that the

1 counterparty has an independent rep-
2 resentative that—

3 “(I) has sufficient knowledge to
4 evaluate the transaction and risks;

5 “(II) is not subject to a statutory
6 disqualification;

7 “(III) is independent of the sig-
8 nificant security-based derivatives
9 market participant;

10 “(IV) undertakes a duty to act in
11 the best interests of the counterparty
12 it represents;

13 “(V) makes appropriate disclo-
14 sures; and

15 “(VI) will provide written rep-
16 resentations to the eligible contract
17 participant regarding fair pricing and
18 the appropriateness of the trans-
19 action;

20 “(D) require the availability of information
21 about any security or the issuer of any security
22 referenced in a security-based swap (or security
23 derivative, as the Commission determines by
24 rule, regulation, or order), or upon which such
25 security-based swap (or security derivative, as

1 the Commission determines by rule, regulation,
2 or order) is based; and

3 “(E) establish such other standards and
4 requirements as the Commission, acting jointly
5 with the Commodity Futures Trading Commis-
6 sion and in consultation with the appropriate
7 regulatory authorities, may determine are nec-
8 essary or appropriate in the public interest, for
9 the protection of investors, or otherwise in fur-
10 therance of the purposes of this title.

11 “(d) STATUTORY DISQUALIFICATION.—Except to the
12 extent otherwise specifically provided by rule, regulation,
13 or order of the Commission, it shall be unlawful for a sig-
14 nificant derivatives market participant to permit any asso-
15 ciated person of such significant derivatives market partic-
16 ipant who is subject to a statutory disqualification to ef-
17 fect or be involved in effecting transactions in security-
18 based swaps (or security derivatives, as the Commission
19 determines by rule, regulation, or order) on behalf of such
20 significant derivatives market participant, if such signifi-
21 cant derivatives market participant knew, or in the exer-
22 cise of reasonable care should have known, of such statu-
23 tory disqualification.

24 “(e) ADMINISTRATIVE PROCEEDING AUTHORITY.—

1 “(1) IN GENERAL.—The Commission, by order,
2 shall censure, place limitations on the activities,
3 functions, or operations of, or reject the filing of any
4 significant security-based derivatives market partici-
5 pant that has registered with the Commission pursu-
6 ant to subsection (b) if it finds, on the record after
7 notice and opportunity for hearing, that such action
8 is in the public interest and that such significant se-
9 curity-based derivatives market participant, or any
10 person associated with such significant security-
11 based derivatives market participant effecting or in-
12 volved in effecting transactions in security-based
13 swaps (or security derivatives, as the Commission
14 determines by rule, regulation, or order) on behalf of
15 such significant security-based derivatives market
16 participant, whether prior or subsequent to becom-
17 ing so associated—

18 “(A) has committed or omitted any act, or
19 is subject to an order or finding, enumerated in
20 subparagraph (A), (D), or (E) of section
21 15(b)(4);

22 “(B) has been convicted of any offense
23 specified in subparagraph (B) of section
24 15(b)(4) during the 10-year period preceding

1 the date of commencement of the proceedings
2 under this paragraph;

3 “(C) is enjoined from any action, conduct,
4 or practice specified in section 15(b)(4)(C);

5 “(D) is subject to an order or a final order
6 specified in subparagraph (F) or (H), respec-
7 tively, of section 15(b)(4); or

8 “(E) has been found by a foreign financial
9 regulatory authority to have committed or omit-
10 ted any act, or violated any foreign statute or
11 regulation, enumerated in section 15(b)(4)(G).

12 “(2) ASSOCIATED PERSONS.—With respect to
13 any person who is associated, who is seeking to be-
14 come associated, or at the time of the alleged mis-
15 conduct, who was associated or was seeking to be-
16 come associated, with a significant security-based
17 derivatives market participant for the purpose of ef-
18 fecting or being involved in effecting any security-
19 based swaps (or security derivatives, as the Commis-
20 sion determines by rule, regulation, or order) on be-
21 half of such significant security-based derivatives
22 market participant, the Commission, by order, shall
23 censure, place limitations on the activities or func-
24 tions of such person, or suspend for a period of not
25 longer than 12 months, or bar such person from

1 being associated with a significant security-based de-
2 rivatives market participant, if the Commission
3 finds, on the record after notice and opportunity for
4 a hearing, that such action is in the public interest,
5 and that such person—

6 “(A) has committed or omitted any act, or
7 is subject to an order or finding, enumerated in
8 subparagraph (A), (D), or (E) of section
9 15(b)(4);

10 “(B) has been convicted of any offense
11 specified in section 15(b)(4)(B) during the 10-
12 year period preceding the date of commence-
13 ment of the proceedings under this paragraph;

14 “(C) is enjoined from any action, conduct,
15 or practice specified in section 15(b)(4)(C);

16 “(D) is subject to an order or a final order
17 specified in subparagraph (F) or (H), respec-
18 tively, of section 15(b)(4); or

19 “(E) has been found by a foreign financial
20 regulatory authority to have committed or omit-
21 ted any act, or violated any foreign statute or
22 regulation, enumerated in section 15(b)(4)(G).

23 “(3) ADDITIONAL PROHIBITIONS.—It shall be
24 unlawful—

1 “(A) for any person as to whom an order
2 under paragraph (2) is in effect, without the
3 consent of the Commission, willfully to become,
4 or to be, associated with a significant security-
5 based derivatives market participant in con-
6 travention of such order; or

7 “(B) for any significant security-based de-
8 rivatives market participant to permit such a
9 person, without the consent of the Commission,
10 to become or remain, a person associated with
11 the significant security-based derivatives market
12 participant in contravention of an order under
13 paragraph (2), if such significant security-based
14 derivatives market participant knew, or in the
15 exercise of reasonable care should have known,
16 of the order.

17 “(f) CAPITAL AND MARGIN REQUIREMENTS.—

18 “(1) IN GENERAL.—It shall be unlawful for any
19 person to conduct business as a significant security-
20 based derivatives market participant, unless such
21 person meets at all times such minimum capital and
22 margin requirements as the appropriate regulatory
23 authorities shall jointly prescribe, by rule or regula-
24 tion, as necessary or appropriate in the public inter-
25 est or for the protection of investors and consistent

1 with the purposes of this title to provide safeguards
2 with respect to the financial responsibility and re-
3 lated practices of the significant security-based de-
4 rivatives market participant.

5 “(2) CAPITAL CONSIDERATIONS.—In setting
6 capital requirements for significant security-based
7 derivatives market participants, the appropriate reg-
8 ulatory authorities shall consider, among other
9 things—

10 “(A) the liquidity of each security-based
11 swap (or security derivative, as the Commission
12 determines by rule, regulation, or order), in-
13 cluding whether such instrument is traded on a
14 liquid market, and whether it is centrally
15 cleared; and

16 “(B) whether the security-based swap (or
17 security derivative, as the Commission deter-
18 mines by rule, regulation, or order) is used to
19 offset or hedge another instrument or asset
20 owned by such significant security-based deriva-
21 tive market participant.

22 “(3) MARGIN REQUIREMENTS.—The appro-
23 priate regulatory authorities shall jointly prescribe
24 margin requirements, which may permit the use of
25 non-cash collateral, that apply to security-based

1 swaps (or security derivatives, as the Commission
 2 determines by rule, regulation, or order) entered into
 3 by a significant security-based derivatives market
 4 participant, as the appropriate regulatory authorities
 5 jointly deem necessary or appropriate for the pur-
 6 pose of, among other things—

7 “(A) preserving the financial integrity of
 8 markets trading security-based swaps (or secu-
 9 rity derivatives); and

10 “(B) preventing systemic risk.

11 “(4) COMMISSION RULES.—Nothing in this sec-
 12 tion prevents the Commission from prescribing cap-
 13 ital and margin requirements that are higher or
 14 more restrictive than the joint rules adopted under
 15 this subsection for significant security-based deriva-
 16 tives market participants for which it is the appro-
 17 priate regulatory authority.

18 “(g) APPROPRIATE REGULATORY AUTHORITY DE-
 19 FINED.—For purposes of this section, the term ‘appro-
 20 priate regulatory authority’ means—

21 “(1) the appropriate Federal banking agency
 22 (as defined in section 3 of the Federal Deposit In-
 23 surance Act (12 U.S.C. 1813)) with respect to a sig-
 24 nificant security-based derivatives market partici-
 25 pant that is an insured depository institution (as de-

1 fined in section 3 of the Federal Deposit Insurance
2 Act (12 U.S.C. 1813)), other than an affiliate of an
3 insured depository institution;

4 “(2) the Federal Housing Finance Agency, with
5 respect to a significant security-based derivatives
6 market participant that is a regulated entity (as de-
7 fined in section 1301 of the Federal Housing Enter-
8 prises Financial Safety and Soundness Act of 1992
9 (12 U.S.C. 4502));

10 “(3) the Commodity Futures Trading Commis-
11 sion, with respect to a significant security-based de-
12 rivatives market participant that is—

13 “(A) a futures commission merchant or an
14 introducing broker (as defined in paragraphs
15 (20) and (23) of section 1a of the Commodity
16 Exchange Act, respectively), other than a
17 broker or dealer registered pursuant to section
18 15(b) of this title (other than paragraph (11)
19 thereof) or an affiliate of an insured depository
20 institution; or

21 “(B) a commodity pool operator or com-
22 modity trading advisor (as defined in para-
23 graphs (5) and (6) of section 1a of the Com-
24 modity Exchange Act, respectively), other than

1 an affiliate of an insured depository institution;
 2 and

3 “(4) the Commission, with respect to any other
 4 significant security-based derivatives market partici-
 5 pant for which there is not another appropriate reg-
 6 ulatory authority otherwise specified in this sub-
 7 section.

8 “(h) ENFORCEMENT AUTHORITY.—Each appropriate
 9 regulatory authority shall have sole authority to enforce
 10 compliance with the rules adopted under subsection (f) in
 11 the case of each significant security-based derivatives mar-
 12 ket participant for which it is the appropriate regulatory
 13 authority, as defined in subsection (g).”.

14 (b) EXEMPTION FROM BROKER OR DEALER REG-
 15 ISTRATION.—Section 15(b) of the Securities Exchange Act
 16 of 1934 (15 U.S.C. 78o(b)) is amended by adding at the
 17 end the following:

18 “(13) EXEMPTION FOR SIGNIFICANT SECURITY-
 19 BASED DERIVATIVES MARKET PARTICIPANTS.—A
 20 person shall be exempt from the registration require-
 21 ments of this section, to the extent that such person
 22 engages in transactions in security-based swaps, if
 23 such person would otherwise be required to register
 24 under this section only because such person effects
 25 transactions in security-based swaps with eligible

1 contract participants and is a significant security-
 2 based derivatives market participant that has reg-
 3 istered in accordance with section 15F(b).”.

4 **SEC. 105. RECORDKEEPING AND REPORTING REQUIRE-**
 5 **MENTS FOR DERIVATIVES MARKET PARTICI-**
 6 **PANTS.**

7 (a) RECORDKEEPING AND EXAMINATION REQUIRE-
 8 MENTS FOR SECURITY-BASED DERIVATIVE MARKET PAR-
 9 TICIPANTS.—Section 17 of the Securities Exchange Act
 10 of 1934 (15 U.S.C. 78q) is amended by adding at the end
 11 the following:

12 “(l) RECORDKEEPING BY MARKET PARTICIPANTS IN
 13 SECURITY-BASED SWAPS OR SECURITY DERIVATIVES;
 14 EXAMINATIONS.—

15 “(1) RECORDKEEPING.—

16 “(A) IN GENERAL.—Effective not later
 17 than 180 days after the date of enactment of
 18 this subsection, the Commission shall, by rule,
 19 regulation, or order, require each significant se-
 20 curity-based derivatives market participant, and
 21 such other persons as the Commission, by rule,
 22 regulation, or order, determines, to create, keep
 23 current, and maintain for prescribed periods
 24 such records, furnish such copies thereof (and
 25 make and disseminate such reports) relating to

1 security-based swaps (or security derivatives, as
2 the Commission determines by rule, regulation,
3 or order) to the Commission, as necessary or
4 appropriate in the public interest, for the pro-
5 tection of investors, or otherwise in furtherance
6 of the purposes of this title.

7 “(B) MINIMUM REQUIREMENTS.—At a
8 minimum, the actions of the Commission under
9 subparagraph (A) shall require, as applicable,
10 the creation and maintenance of client informa-
11 tion records, agreements, client ledger informa-
12 tion, trade blotters, memoranda of agreements
13 to enter into confirmations, position records,
14 and communications relating to transactions in
15 security-based swaps (or security derivatives, as
16 the Commission determines by rule, regulation,
17 or order) and the reporting of transactions and
18 position data.

19 “(2) EXAMINATIONS.—All records of significant
20 security-based derivatives market participants and
21 such other persons described in paragraph (1) are
22 subject at any time, or from time to time, to such
23 reasonable periodic, special, or other examinations
24 by representatives of the Commission, as the Com-
25 mission deems necessary or appropriate in the public

1 interest, for the protection of investors, or otherwise
2 in furtherance of the purposes of this title.”.

3 (b) REPORTING BY SIGNIFICANT SECURITY-BASED
4 DERIVATIVES MARKET PARTICIPANTS.—Section 13 of the
5 Securities Exchange Act of 1934 (15 U.S.C. 78m) is
6 amended by adding at the end the following new sub-
7 section:

8 “(m) REPORTING BY SIGNIFICANT SECURITY-BASED
9 DERIVATIVES MARKET PARTICIPANTS.—

10 “(1) IN GENERAL.—For the purpose of moni-
11 toring the impact of transactions in security-based
12 swaps and, as appropriate, security derivatives, and
13 for the purpose of otherwise assisting the Commis-
14 sion in the enforcement of this title, any significant
15 security-based derivatives market participant that
16 purchases or sells security-based swaps (or security
17 derivatives, as the Commission determines by rule,
18 regulation, or order) shall report such information
19 as the Commission may, by rule, regulation, or
20 order, prescribe as necessary or appropriate in the
21 public interest, for the protection of investors, or
22 otherwise in furtherance of the purposes of this title.

23 “(2) CONSIDERATIONS.—In exercising its au-
24 thority under this subsection, the Commission shall
25 take into account—

1 “(A) existing reporting systems;

2 “(B) the costs associated with reporting
3 such information; and

4 “(C) the relationship between the United
5 States and international securities and deriva-
6 tives markets.

7 “(3) LIMITATION ON DISCLOSURE.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law, the Commission may not
10 be compelled to disclose any information re-
11 quired by Commission rule, regulation, or order
12 to be reported to the Commission under this
13 subsection.

14 “(B) EXCEPTION.—Nothing in this sub-
15 section shall—

16 “(i) authorize the Commission to
17 withhold information from Congress; or

18 “(ii) prevent the Commission from
19 complying with—

20 “(I) a request for information
21 from any other Federal department or
22 agency requesting information for
23 purposes within the scope of its juris-
24 diction; or

1 “(II) an order of a court of the
 2 United States in an action brought by
 3 the United States or the Commission.

4 “(C) TREATMENT FOR TITLE 5 PUR-
 5 POSES.—For purposes of section 552 of title 5,
 6 United States Code, this subsection shall be
 7 considered a statute described in subsection
 8 (b)(3)(B) of such section 552.”.

9 (c) BENEFICIAL OWNERSHIP REPORTING.—Section
 10 13 of the Securities Exchange Act of 1934 (15 U.S.C.
 11 78m) is amended—

12 (1) in subsection (d)(1), by inserting after
 13 “Alaska Native Claims Settlement Act,” the fol-
 14 lowing: “or otherwise becomes or is deemed to be-
 15 come a beneficial owner of any of the foregoing,
 16 upon the purchase or sale of a security-based swap
 17 or security derivative that the Commission may de-
 18 fine, by rule, and”;

19 (2) in subsection (g)(1), by inserting after
 20 “subsection (d)(1) of this section” the following: “or
 21 otherwise becomes or is deemed to become a bene-
 22 ficial owner of any security of a class described in
 23 subsection (d)(1) upon the purchase or sale of a se-
 24 curity-based swap or security derivative that the
 25 Commission may define, by rule”; and

1 (3) in subsection (f)(1), by inserting after “sec-
 2 tion (13)(d)(1) of this title” the following: “, or oth-
 3 erwise becomes or is deemed to become a beneficial
 4 owner of any security of a class described in sub-
 5 section (d)(1) upon the purchase or sale of a secu-
 6 rity-based swap or security derivative that the Com-
 7 mission may define, by rule,”.

8 (d) INSTITUTIONAL INVESTMENT MANAGER RE-
 9 PORTING.—Section 13 of the Securities Exchange Act of
 10 1934 (15 U.S.C. 78m) is amended—

11 (1) in subsection (f)(1), by inserting before
 12 “shall file reports” the following: “or security-based
 13 swaps or security derivatives that the Commission
 14 may define by rule, having such values as the Com-
 15 mission may determine, by rule”; and

16 (2) in subsection (f)(3), by inserting before
 17 “updated as” the following: “and security-based
 18 swaps or security derivatives that the Commission
 19 may define, by rule”.

20 (e) REPORTING BY CORPORATE INSIDERS.—Section
 21 16(f) of the Securities Exchange Act of 1934 (15 U.S.C.
 22 78p(f)) is amended by inserting “or security-based swaps”
 23 after “security futures products”.

24 (f) RECORDKEEPING BY TRADE REPOSITORIES.—
 25 Section 17(a)(1) of the Securities Exchange Act of 1934

1 (15 U.S.C. 78q(a)(1)) is amended by inserting “registered
 2 trade repository,” after “registered securities information
 3 processor,”.

4 **SEC. 106. PROHIBITION OF MARKET MANIPULATION,**
 5 **FRAUD, AND OTHER MARKET ABUSES.**

6 (a) RULEMAKING AUTHORITY TO PREVENT FRAUD,
 7 MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-
 8 BASED SWAPS AND SECURITY DERIVATIVES.—Section 9
 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i),
 10 as amended by this Act, is amended by adding at the end
 11 the following:

12 “(j) DECEPTIVE CONDUCT IN SECURITY-BASED
 13 SWAPS AND SECURITY DERIVATIVES.—

14 “(1) IN GENERAL.—It shall be unlawful for any
 15 person, directly or indirectly, by the use of any
 16 means or instrumentality of interstate commerce or
 17 of the mails, or of any facility of any national securi-
 18 ties exchange, to effect any transaction in, or to in-
 19 duce or attempt to induce the purchase or sale of,
 20 any security-based swap or security derivative, in
 21 connection with which such person engages in any
 22 fraudulent, deceptive, or manipulative act or prac-
 23 tice, makes any fictitious quotation, or engages in
 24 any transaction, practice, or course of business
 25 which operates as a fraud or deceit upon any person.

1 “(2) RULEMAKING REQUIRED.—The Commis-
 2 sion shall, for purposes of this subsection, by rule,
 3 regulation, or order, define and prescribe means rea-
 4 sonably designed to prevent transactions, acts, prac-
 5 tices, and courses of business that are fraudulent,
 6 deceptive, or manipulative, and fictitious quotations.

7 “(3) CONSULTATION.—In adopting rules under
 8 this subsection, the Commission shall consult with
 9 the Commodity Futures Trading Commission and
 10 seek to maintain comparability of such rules with
 11 similar rules of the Commodity Futures Trading
 12 Commission.”.

13 (b) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
 14 TAIN ANTIMANIPULATION PROVISIONS.—Section 9(b) of
 15 the Securities Exchange Act of 1934 (15 U.S.C. 78i(b))
 16 is amended by striking paragraphs (1) through (3) and
 17 inserting the following:

18 “(1) any transaction in connection with any se-
 19 curity whereby any party to such transaction ac-
 20 quires—

21 “(A) any put, call, straddle, or other op-
 22 tion or privilege of buying the security from or
 23 selling the security to another without being
 24 bound to do so;

1 “(B) any security futures product on or re-
2 lated to the security; or

3 “(C) any security-based swap involving the
4 security or the issuer of the security;

5 “(2) any transaction in connection with any se-
6 curity with relation to which that person has, di-
7 rectly or indirectly, any interest in any—

8 “(A) put, call, straddle, option, or privilege
9 described in paragraph (1);

10 “(B) security futures product described in
11 paragraph (1); or

12 “(C) security-based swap described in
13 paragraph (1); or

14 “(3) any transaction in any security for the ac-
15 count of any person who that person has reason to
16 believe has, and who actually has, directly or indi-
17 rectly, any interest in any—

18 “(A) put, call, straddle, option, or privilege
19 described in paragraph (1);

20 “(B) security futures product with relation
21 to such security described in paragraph (1); or

22 “(C) any security-based swap involving
23 such security or the issuer of such security.”.

24 (c) POSITION LIMITS AND POSITION ACCOUNT-
25 ABILITY FOR SECURITY-BASED SWAPS OR SECURITY DE-

1 RIVATIVES.—The Securities Exchange Act of 1934 (15
 2 U.S.C. 78a et seq.) is amended by inserting after section
 3 10A the following new section:

4 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
 5 **ABILITY FOR SECURITY-BASED SWAPS OR SE-**
 6 **CURITY DERIVATIVES.**

7 “(a) RULEMAKING AUTHORITY.—

8 “(1) IN GENERAL.—As a means reasonably de-
 9 signed to prevent fraud or manipulation, the Com-
 10 mission, by rule, regulation, or order, as necessary
 11 or appropriate in the public interest, for the protec-
 12 tion of investors, or otherwise in furtherance of the
 13 purposes of this title, may—

14 “(A) prescribe requirements regarding the
 15 size of positions that may be held by or on be-
 16 half of any person or persons in any security-
 17 based swap (or security derivative, as the Com-
 18 mission determines by rule, regulation, or
 19 order) and any security on which such security-
 20 based swap (or security derivative) is based or
 21 referenced, or as to which the issuer of such se-
 22 curity is referenced; and

23 “(B) require any person that effects trans-
 24 actions for his own account or the account of
 25 others in any security-based swap (or security

1 derivative, as the Commission determines by
2 rule, regulation, or order) and any security on
3 which such security-based swap (or security de-
4 rivative) is based or referenced, or the issuer of
5 such security is referenced, to report such infor-
6 mation as the Commission may prescribe re-
7 garding any position or positions in security-
8 based swaps (or security derivatives) and any
9 security on which such security-based swap (or
10 security derivative) is based or referenced, or as
11 to which the issuer of such security is ref-
12 erenced.

13 “(2) EXEMPTIONS AUTHORIZED.—The Com-
14 mission, by rule, regulation, or order, may condi-
15 tionally or unconditionally exempt any person or
16 class of persons, any security-based swap (or secu-
17 rity derivative) or class of security-based swaps (or
18 security derivatives), or any transaction or class of
19 transactions from any requirement that the Commis-
20 sion may establish under this subsection.

21 “(b) SELF-REGULATORY ORGANIZATIONS.—As a
22 means reasonably designed to prevent fraud or manipula-
23 tion, the Commission, by rule, regulation, or order, as nec-
24 essary or appropriate in the public interest, for the protec-
25 tion of investors, or otherwise in furtherance of the pur-

1 poses of this title, may direct a self-regulatory organiza-
 2 tion—

3 “(1) to adopt rules regarding the size of posi-
 4 tions in any security-based swap (or security deriva-
 5 tive) and any security on which such security-based
 6 swap (or security derivative) is based or referenced,
 7 or as to which the issuer of such security is ref-
 8 erenced that may be held by—

9 “(A) any member of such self-regulatory
 10 organization; or

11 “(B) any person for whom a member of
 12 such self-regulatory organization effects trans-
 13 actions in such security-based swap, security
 14 derivative, or other security; and

15 “(2) to adopt rules reasonably designed to as-
 16 sure compliance with requirements prescribed by the
 17 Commission under subsection (a).”.

18 (d) STATE GAMING AND BUCKET SHOP LAWS.—Sec-
 19 tion 28(a) of the Securities Exchange Act of 1934 (15
 20 U.S.C. 78bb(a)) is amended to read as follows:

21 “(a) STATE GAMING AND BUCKET SHOP LAWS.—

22 “(1) IN GENERAL.—Except as provided in sub-
 23 section (f), the rights and remedies provided by this
 24 title shall be in addition to any and all other rights
 25 and remedies that may exist at law or in equity, but

1 no person permitted to maintain a suit for damages
 2 under the provisions of this title shall recover,
 3 through satisfaction of judgment in 1 or more ac-
 4 tions, a total amount in excess of the actual dam-
 5 ages of that person due to the act that is the subject
 6 of the action.

7 “(2) RULE OF CONSTRUCTION.—Except as oth-
 8 erwise specifically provided in this title, nothing in
 9 this title shall affect the jurisdiction of the securities
 10 commission (or any agency or officer performing like
 11 functions) of any State over any security or any per-
 12 son, to the extent that the exercise thereof does not
 13 conflict with the provisions of this title or the rules
 14 and regulations thereunder.

15 “(3) GAMING LAWS.—No provision of State law
 16 which prohibits or regulates the making or pro-
 17 moting of wagering or gaming contracts, or the op-
 18 eration of ‘bucket shops’ or other similar or related
 19 activities, shall invalidate—

20 “(A) any put, call, straddle, option, privi-
 21 lege, or other security that is subject to regula-
 22 tion under this title (except a security-based
 23 swap and any security that has a pari-mutual
 24 payout or otherwise is determined by the Com-
 25 mission, acting by rule, regulation, or order, to

1 be appropriately subject to such laws), or apply
 2 to any activity which is incidental or related to
 3 the offer, purchase, sale, exercise, settlement, or
 4 closeout of any such security;

5 “(B) any security-based swap between eli-
 6 gible contract participants; or

7 “(C) any security-based swap effected on a
 8 national securities exchange that is registered
 9 pursuant to section 6(b).

10 “(4) SECURITY FUTURES PRODUCT.—No provi-
 11 sion of State law regarding the offer, sale, or dis-
 12 tribution of securities shall apply to any transaction
 13 in a security futures product, except that this para-
 14 graph may not be construed as limiting any State
 15 antifraud law of general applicability.”.

16 **SEC. 107. PROTECTIONS FOR MARKETING SECURITY-BASED**
 17 **SWAPS TO CERTAIN PERSONS.**

18 (a) TRADING IN SECURITY-BASED SWAPS.—Section
 19 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f),
 20 as amended by this Act, is amended by adding at the end
 21 the following:

22 “(i) ELIGIBLE CONTRACT PARTICIPANTS.—It shall
 23 be unlawful for any person to effect a transaction in a
 24 security-based swap with or for a person that is not an
 25 eligible contract participant, unless such transaction is ef-

1 fected on a national securities exchange registered pursu-
 2 ant to subsection (b).”.

3 (b) REGISTRATION OF SECURITY-BASED SWAPS.—
 4 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
 5 is amended by adding at the end the following:

6 “(d) REGISTRATION OF SECURITY-BASED SWAPS.—
 7 Notwithstanding the provisions of section 3 or 4, unless
 8 a registration statement meeting the requirements of sec-
 9 tion 10(a) is in effect with respect to a security-based
 10 swap, it shall be unlawful for any person, directly or indi-
 11 rectly, to make use of any means or instruments of trans-
 12 portation or communication in interstate commerce or of
 13 the mails to offer to sell, offer to buy, or purchase, sell,
 14 or buy a security-based swap to any person who is not
 15 an eligible contract participant, as defined in section
 16 3(a)(66) of the Securities Exchange Act of 1934.”.

17 **SEC. 108. ENFORCEMENT.**

18 Section 21 of the Securities Exchange Act of 1934
 19 (15 U.S.C. 78u) is amended by adding at the end the fol-
 20 lowing:

21 “(j) ENFORCEMENT OF PROVISIONS APPLICABLE TO
 22 DERIVATIVES MARKET PARTICIPANTS.—

23 “(1) IN GENERAL.—In addition to enforcement
 24 by the Commission under the securities laws of com-
 25 pliance with sections 6(l), 13(m), 15F(a), 15F(c),

1 15F(d), 17(l), 17C(b)(1), and 17C(e)(1), compliance
2 with such sections shall be enforced under—

3 “(A) section 8 of the Federal Deposit In-
4 surance Act (12 U.S.C. 1818), by the appro-
5 priate Federal banking agency, in the case of
6 an insured depository institution, as those
7 terms are defined in section 3 of that Act (12
8 U.S.C. 1813), other than an affiliate of an in-
9 sured depository institution, as defined in sec-
10 tion 3 of that Act (12 U.S.C. 1813);

11 “(B) the Commodity Exchange Act (7
12 U.S.C. 1 et seq.), by the Commodity Futures
13 Trading Commission, in the case of a futures
14 commission merchant, introducing broker, com-
15 modity pool operator, or commodity trading ad-
16 visor, as those terms are defined in sections 1a
17 of the Commodity Exchange Act, other than an
18 affiliate of an insured depository institution, as
19 defined in section 3 of the Federal Deposit In-
20 surance Act (12 U.S.C. 1813); and

21 “(C) the Federal Housing Enterprises Fi-
22 nancial Safety and Soundness Act of 1992 (12
23 U.S.C. 4501 et seq.), by the Federal Housing
24 Finance Agency, in the case of a regulated enti-
25 ty, as defined in section 1303 of the Federal

1 Housing Enterprises Financial Safety and
2 Soundness Act of 1992 (12 U.S.C. 4502).

3 “(2) VIOLATIONS TREATED AS VIOLATIONS OF
4 OTHER LAWS.—For purposes of the exercise by any
5 agency referred to in paragraph (1), a violation of
6 sections 6(l), 13(m), 15F(a), 15F(c), 15F(d), 17(l),
7 17C(b)(1), and 17C(c)(1) of this title shall be
8 deemed to be a violation of a requirement imposed
9 under that provision of law. In addition to its powers
10 under any provision of law specifically referred to in
11 paragraph (1), each of the agencies referred to in
12 that paragraph may exercise, for the purpose of en-
13 forcing compliance with sections 6(l), 13(m),
14 15F(a), 15F(c), 15F(d), 17(l), 17C(b)(1), and
15 17C(c)(1) of this title, any other authority conferred
16 on such agency by law.”.

17 **SEC. 109. ENFORCEABILITY OF SECURITY-BASED SWAPS.**

18 Section 29(b)(2) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78cc(b)(2)) is amended by striking “and
20 (B)” and inserting the following: “, (B) that no agree-
21 ment, contract, or transaction that is a security-based
22 swap shall be void, voidable, or unenforceable by either
23 party to such security-based swap, and no party thereto
24 shall be entitled to rescind, or recover any payment made
25 with respect to, such security-based swap under this sec-

tion or any other provision of securities laws based solely on the failure of either party to the agreement, contract, or transaction to satisfy its respective obligations under sections 6(l), 10B, 13, 15(b), 15F, 17, and 17C of this title with respect to such security-based swap, and (C)”..

SEC. 110. TRANSFER AND RIGHTS OF CERTAIN CFTC EMPLOYEES.

(a) TRANSFER.—Each employee of the Commodity Futures Trading Commission (in this section referred to as the “CFTC”) whose position and responsibilities would be more effectively utilized at the Securities and Exchange Commission (in this section referred to as the “SEC”), based on this Act and the amendments made by this Act, as determined by the Secretary of the Treasury, shall be transferred to the SEC for employment, not later than 60 days after the date of enactment of this Act. Such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with equivalent status, tenure, pay and benefits as that held on the day immediately preceding the transfer, subject to paragraph (2).

1 (2) NO INVOLUNTARY SEPARATION OR REDUC-
 2 TION.—An employee transferred under subsection
 3 (a) holding a permanent position on the day imme-
 4 diately preceding the transfer may not be involun-
 5 tarily separated or reduced in grade or compensation
 6 during the 12-month period beginning on the date of
 7 transfer, except for cause, or, in the case of a tem-
 8 porary employee, separated in accordance with the
 9 terms of the appointment of the employee.

10 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
 11 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

12 (1) IN GENERAL.—In the case of an employee
 13 of the CFTC occupying a position in the excepted
 14 service or the Senior Executive Service, such em-
 15 ployee shall, on and after the date of transfer to the
 16 SEC, be deemed to be appointed under the appoint-
 17 ment authority of the SEC for filling an equivalent
 18 position at the SEC, subject to paragraph (2).

19 (2) DECLINING APPLICATION OF EQUIVALENT
 20 APPOINTMENT AUTHORITY.—The Chairman of the
 21 SEC may decline the application of the equivalent
 22 appointment authority of the SEC to an employee of
 23 the CFTC occupying a position in the excepted serv-
 24 ice or the Senior Executive Service under paragraph

1 (1) to the extent that the authority by which the em-
 2 ployee was appointed by the CFTC relates to—

3 (A) a position excepted from the competi-
 4 tive service because of its confidential, policy-
 5 making, policy-determining, or policy-advocating
 6 character; or

7 (B) a noncareer position in the Senior Ex-
 8 ecutive Service (within the meaning of section
 9 3132(a)(7) of title 5, United States Code).

10 (d) REORGANIZATION.—If the Chairman of the SEC
 11 determines, after the end of the 1-year period beginning
 12 on the date of enactment of this Act, that a reorganization
 13 of the combined workforce is required, that reorganization
 14 shall be deemed a major reorganization for purposes of
 15 affording affected employee retirement under section
 16 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
 17 Code.

18 **TITLE II—REGULATION OF COM-** 19 **MODITY-BASED DERIVATIVES**

20 **SEC. 201. DEFINITIONS.**

21 Section 1a of the Commodity Exchange Act (7 U.S.C.
 22 1a) is amended—

23 (1) by striking paragraphs (1), (25), (31), and
 24 (32);

1 (2) by redesignating paragraphs (2) through
 2 (4), (5) through (8), (9) through (24), (26) through
 3 (28), (29), (30), (33), and (34) as paragraphs (1)
 4 through (3), (7) through (10), (12) through (27),
 5 (28) through (30), (32), (33), (35), and (37), re-
 6 spectively;

7 (3) by inserting after paragraph (3) (as redesign-
 8 ated by paragraph (2) of this section) the fol-
 9 lowing:

10 “(4) COMMODITY-BASED SWAP.—The term
 11 ‘commodity-based swap’ means a swap that is not a
 12 security-based swap, as defined in section 3(a) of the
 13 Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

14 “(5) COMMODITY-BASED SWAP EXECUTION FA-
 15 CILITY.—The term ‘commodity-based swap execution
 16 facility’ means a trading facility registered under
 17 section 5h.

18 “(6) COMMODITY DERIVATIVE.—The term
 19 ‘commodity derivative’ means any derivative that is
 20 a contract of sale for future delivery of any com-
 21 modity (or option on a contract of sale for future de-
 22 livery of any commodity) subject to the exclusive ju-
 23 risdiction of the Commission under this Act, other
 24 than a swap.”;

1 (4) by inserting after paragraph (10) (as rededesignated by paragraph (2) of this section) the following:

4 “(11) DERIVATIVE.—The term ‘derivative’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).”;

8 (5) by inserting after paragraph (30) (as redesignated by paragraph (2) of this section) the following:

11 “(31) PERSON ASSOCIATED WITH A SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANT.—

14 “(A) IN GENERAL.—The term ‘person associated with a significant commodity-based derivatives market participant’ means—

17 “(i) any partner, officer, director, or branch manager of a significant commodity-based derivatives market participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a significant commodity-based derivatives market participant);

1 “(ii) any person that directly or indi-
 2 rectly controls, is controlled by, or is under
 3 common control with a significant com-
 4 modity-based derivatives market partici-
 5 pant; and

6 “(iii) any employee of a significant
 7 commodity-based derivatives market partici-
 8 pant.

9 “(B) EXCLUSION.—Other than for pur-
 10 poses of section 4s, the term ‘person associated
 11 with a significant commodity-based derivatives
 12 market participant’ does not include any person
 13 associated with a significant commodity-based
 14 derivatives market participant the functions of
 15 which are solely clerical or ministerial.”;

16 (6) in paragraph (32) (as redesignated by para-
 17 graph (2) of this section)—

18 (A) by striking subparagraph (D) and in-
 19 serting the following:

20 “(D) a commodity-based swap execution
 21 facility registered under section 5h;”;

22 (B) in subparagraph (E), by striking the
 23 period and inserting a semicolon; and

24 (C) by adding at the end the following:

1 “(F) a significant commodity-based deriva-
2 tives market participant; and

3 “(G) a trade repository under section 4r.”;

4 (7) by inserting after paragraph (33) (as redes-
5 ignated by paragraph (2) of this section) the fol-
6 lowing:

7 “(34) SIGNIFICANT COMMODITY-BASED DERIVA-
8 TIVES MARKET PARTICIPANT.—

9 “(A) IN GENERAL.—The term ‘significant
10 commodity-based derivatives market partici-
11 pant’ means—

12 “(i) any person that is engaged in the
13 business of purchasing or selling 1 or more
14 commodity-based swaps for the account of
15 the person or for any other individual or
16 entity, or making a market in commodity-
17 based swaps, and the 1 or more purchases
18 or sales of which are not solely for the pur-
19 pose of managing the risk associated
20 with—

21 “(I) an asset that is, or is antici-
22 pated to be, owned, produced, manu-
23 factured, processed, or merchandised;

24 “(II) potential changes in the
25 value of services to be purchased or

1 provided, or anticipated to be pur-
 2 chased or provided; or

3 “(III) a liability incurred or an-
 4 ticipated to be incurred by a person
 5 that is not, or is not related to, a
 6 commodity-based swap; or

7 “(ii) any other person designated by
 8 the Commission, after consultation with
 9 the Securities and Exchange Commission,
 10 by rule, regulation, or order as is appro-
 11 priate to further—

12 “(I) the interests of the public;

13 “(II) the protection of market
 14 participants; or

15 “(III) the purposes of this Act.

16 “(B) EXCLUSION.—The term ‘significant
 17 commodity-based derivatives market partici-
 18 pant’ does not include an investment company
 19 registered under the Investment Company Act
 20 of 1940 (15 U.S.C. 80a–1 et seq.).”;

21 (8) by inserting after paragraph (35) (as redes-
 22 ignated by paragraph (2) of this section) the fol-
 23 lowing:

1 “(36) SWAP.—The term ‘swap’ has the mean-
 2 ing given the term in section 3(a) of the Securities
 3 Exchange Act of 1934 (15 U.S.C. 78c(a)).”; and

4 (9) by adding at the end the following:

5 “(38) TRADE REPOSITORY.—The term ‘trade
 6 repository’ means any person that collects, cal-
 7 culates, processes, or prepares information with re-
 8 spect to 1 or more transactions or positions in 1 or
 9 more commodity-based swaps.”.

10 **SEC. 202. RATIONALIZATION OF FINANCIAL PRODUCT**
 11 **OVERSIGHT.**

12 (a) CFTC AUTHORITY OVER COMMODITY-BASED
 13 SWAPS.—

14 (1) AMENDMENTS TO COMMODITY FUTURES
 15 MODERNIZATION ACT OF 2000.—

16 (A) DEFINITIONS.—Section 402 of the
 17 Commodity Futures Modernization Act of 2000
 18 (7 U.S.C. 27) is amended by striking subsection
 19 (d).

20 (B) EXCLUSION OF COVERED SWAP
 21 AGREEMENTS.—Section 407 of the Commodity
 22 Futures Modernization Act of 2000 (7 U.S.C.
 23 27e) is repealed.

24 (C) CONTRACT ENFORCEMENT.—Section
 25 408 of the Commodity Futures Modernization

1 Act of 2000 (7 U.S.C. 27f) is amended by
 2 striking subsections (b) and (c) and inserting
 3 the following:

4 “(b) PREEMPTION.—This title shall supersede and
 5 preempt the application of any State or local law that pro-
 6 hibits or regulates gaming or the operation of bucket
 7 shops (other than antifraud provisions of general applica-
 8 bility) in the case of a hybrid instrument that is predomi-
 9 nantly a banking product.”.

10 (2) AMENDMENTS TO COMMODITY EXCHANGE
 11 ACT.—

12 (A) IN GENERAL.—Section 2 of the Com-
 13 modity Exchange Act (7 U.S.C. 2) is amend-
 14 ed—

15 (i) in subsection (a)(1)—

16 (I) in the first sentence of sub-
 17 paragraph (A), by striking “subpara-
 18 graphs (C) and (D) of this paragraph
 19 and subsections (c) through (i) of this
 20 section” and inserting “subparagraph
 21 (C) and subsections (c) through (e)”;

22 (II) in subparagraph (C), by
 23 striking clauses (ii) through (v) and
 24 inserting the following:

1 “(ii) CONTRACTS OF SALE FOR FU-
 2 TURE DELIVERY.—This Act shall not apply
 3 to, and the Commission shall have no ju-
 4 risdiction to designate a board of trade as
 5 a contract market for any contract of sale
 6 (or option on such contract) for future de-
 7 livery—

8 “(I) of any security, or interest
 9 in a security or based on the value of
 10 a security (other than an exempted
 11 security under section 3(a) of the Se-
 12 curities Exchange Act of 1934 (15
 13 U.S.C. 78c(a)), as in effect on the
 14 date of enactment of the Futures
 15 Trading Act of 1982 (other than any
 16 municipal security, as defined in that
 17 section 3(a), as in effect on the date
 18 of enactment of the Futures Trading
 19 Act of 1982), or any group or index
 20 of such securities or any interest in a
 21 security or based on the value of a se-
 22 curity; or

23 “(II) based on any financial, eco-
 24 nomic, or commercial occurrence, ex-
 25 tent of an occurrence, contingency, or

1 consequence that is related to or
2 based on a security, an interest in a
3 security, or an issuer of a security, or
4 based on the value of any of the fore-
5 going (other than an exempted secu-
6 rity under section 3(a) of the Securi-
7 ties Exchange Act of 1934 (15 U.S.C.
8 78c(a)), as in effect on the date of en-
9 actment of the Futures Trading Act
10 of 1982 (other than any municipal se-
11 curity, as defined in that section 3(a),
12 as in effect on the date of enactment
13 of the Futures Trading Act of 1982),
14 or any group or index of such securi-
15 ties, or interests in such securities or
16 issuers of such securities, or based on
17 the value of any of the foregoing.”;
18 and

19 (III) by striking subparagraphs
20 (D), (E), and (F);

21 (ii) by striking subsections (d), (e),
22 (g), (h), and (i);

23 (iii) by inserting after subsection (c)
24 the following:

1 “(d) COMMODITY-BASED SWAPS.—Nothing in this
 2 Act (other than subsections (a)(1)(B), (a)(1)(C), (e) and
 3 (f), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5b,
 4 5c, 5h, 6(c), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a),
 5 13(b), 21, and 22(a)(4) and such other provisions of this
 6 Act as are applicable by the terms of the provisions to
 7 registered entities and Commission registrants) governs or
 8 applies to a commodity-based swap.”; and

9 (iv) by redesignating subsection (f) as
 10 subsection (e).

11 (B) CONFORMING AMENDMENTS.—

12 (i) Section 1a of the Commodity Ex-
 13 change Act (7 U.S.C. 1a) (as amended by
 14 section 201(2)) is amended in paragraph
 15 (35) by inserting before the period at the
 16 end the following: “(as in effect on the day
 17 before the date of enactment of the Com-
 18 prehensive Derivatives Regulation Act of
 19 2009)”.

20 (ii) Section 5c(a)(1) of the Commodity
 21 Exchange Act (7 U.S.C. 7a–2(a)(1)) is
 22 amended by striking “, and section 2(h)(7)
 23 with respect to significant price discovery
 24 contracts,”.

1 (iii) Section 5d(a) of the Commodity
2 Exchange Act (7 U.S.C. 7a-3(a)) is
3 amended in the second sentence by striking
4 “subparagraphs (C) and (D) of section
5 2(a)(1)” and inserting “section
6 2(a)(1)(C)”.

7 (iv) Section 5e of the Commodity Ex-
8 change Act (7 U.S.C. 7b) is amended by
9 striking “, or revocation of the right” and
10 all that follows through “significant price
11 discovery contract,”.

12 (v) Section 6(b) of the Commodity
13 Exchange Act (7 U.S.C. 8(b)) is amended
14 in the first sentence by striking “, or to re-
15 voke the right” and all that follows
16 through “significant price discovery con-
17 tract,”.

18 (vi) Section 22(b)(1)(A) of the Com-
19modity Exchange Act (7 U.S.C.
20 25(b)(1)(A)) is amended by striking “sec-
21 tion 2(h)(7) or”.

22 (vii) Section 408(2)(C) of the Federal
23 Deposit Insurance Corporation Improve-
24 ment Act of 1991 (12 U.S.C. 4421(2)(C))
25 is amended—

1 (I) by striking “, 2(d), 2(f), or
2 2(g)”; and

3 (II) by striking “2(h) or”.

4 (3) AMENDMENTS TO THE GRAMM-LEACH-BLI-
5 LEY ACT.—Section 206 of the Gramm-Leach-Bliley
6 Act (15 U.S.C. 78c note) is amended—

7 (A) in subsection (a)—

8 (i) in paragraph (4), by inserting “or”
9 after the semicolon at the end;

10 (ii) in paragraph (5) by striking “;
11 or” at the end and inserting a period; and

12 (iii) by striking paragraph (6);

13 (B) by striking subsection (b); and

14 (C) by redesignating subsections (c) and
15 (d) as subsections (b) and (c), respectively.

16 (b) RATIONALIZATION OF SECURITY FUTURES OVER-
17 SIGHT.—

18 (1) IN GENERAL.—

19 (A) RULEMAKING AUTHORITY TO ADDRESS
20 DUPLICATIVE REGULATIONS OF DUAL REG-
21 ISTRANTS.—Section 4d of the Commodity Ex-
22 change Act (7 U.S.C. 6d) is amended by strik-
23 ing subsection (c).

24 (B) REGISTRATION OF FUTURES COMMIS-
25 SION MERCHANTS, INTRODUCING BROKERS,

1 AND FLOOR BROKERS.—Section 4f(a) of the
2 Commodity Exchange Act (7 U.S.C. 6f(a)) is
3 amended—

4 (i) in paragraph (1), by striking
5 “(1)”; and

6 (ii) by striking paragraphs (2)
7 through (4).

8 (C) DUAL TRADING.—Section 4j of the
9 Commodity Exchange Act (7 U.S.C. 6j) is re-
10 pealed.

11 (D) EXEMPTIONS FOR ASSOCIATED PER-
12 SONS OR SECURITIES BROKER-DEALERS.—Sec-
13 tion 4k of the Commodity Exchange Act (7
14 U.S.C. 6k) is amended by striking paragraph
15 (5) (as added by section 252(d) of the Com-
16 modity Futures Modernization Act of 2000
17 (114 Stat. 2763A–448)).

18 (E) ELECTION TO TRADE EXCLUDED AND
19 EXEMPT COMMODITIES.—Section 5a of the
20 Commodity Exchange Act (7 U.S.C. 7a) is
21 amended by striking subsection (g).

22 (F) OBLIGATION TO ADDRESS DUPLICA-
23 TIVE REGULATION OF DUAL REGISTRANTS.—
24 Section 5c of the Commodity Exchange Act (7

1 U.S.C. 7a–2) is amended by striking subsection
2 (f).

3 (G) DESIGNATION OF SECURITIES EX-
4 CHANGES AND ASSOCIATIONS AS CONTRACT
5 MARKETS.—Section 5f of the Commodity Ex-
6 change Act (7 U.S.C. 7b–1) is repealed.

7 (H) NOTIFICATION OF INVESTIGATIONS
8 AND ENFORCEMENT ACTIONS.—Section 6 of the
9 Commodity Exchange Act is amended by strik-
10 ing subsection (g) (7 U.S.C. 9c).

11 (I) ACTION TO ENJOIN OR RESTRAIN VIO-
12 LATIONS.—Section 6c of the Commodity Ex-
13 change Act (7 U.S.C. 13a–1) is amended by
14 striking subsection (h).

15 (J) PUBLIC DISCLOSURE.—Section 8(a) of
16 the Commodity Exchange Act (7 U.S.C. 12(a))
17 is amended by striking paragraph (3).

18 (K) MARKET REPORTS.—Section 16 of the
19 Commodity Exchange Act (7 U.S.C. 20) is
20 amended by striking subsection (e).

21 (L) OBLIGATION TO ADDRESS DUPLICA-
22 TIVE REGULATION OF DUAL REGISTRANTS.—
23 Section 17 of the Commodity Exchange Act (7
24 U.S.C. 21) is amended—

25 (i) by striking subsection (r); and

1 (ii) by redesignating subsection (q)
2 (as added by section 233(5) of Public Law
3 97–444 (96 Stat. 2320)) as subsection (r).

4 (2) CONFORMING AMENDMENTS TO THE COM-
5 MODITY EXCHANGE ACT.—

6 (A) Section 1a of the Commodity Ex-
7 change Act (7 U.S.C. 1a) (as amended by sec-
8 tion 201(2)) is amended in paragraph (28), by
9 striking the second sentence.

10 (B) Section 4(c)(1) of the Commodity Ex-
11 change Act (7 U.S.C. 6(c)(1)) is amended by
12 striking “(except subparagraphs (C)(ii) and (D)
13 of section 2(a)(1), except that the Commission
14 and the Securities and Exchange Commission
15 may by rule, regulation, or order jointly exclude
16 any agreement, contract, or transaction from
17 section 2(a)(1)(D))”.

18 (C) Section 5a of the Commodity Ex-
19 change Act (7 U.S.C. 7a) is amended—

20 (i) in subsection (b)—

21 (I) in paragraph (2)—

22 (aa) by striking subpara-
23 graph (D); and

24 (bb) by redesignating sub-
25 paragraphs (E) and (F) as sub-

1 paragraphs (D) and (E), respec-
 2 tively; and

3 (II) in paragraph (3)(B)(ii), by
 4 striking “or, if the person trades only
 5 security futures products on the facil-
 6 ity, a national securities association
 7 registered under section 15A(a) of the
 8 Securities Exchange Act of 1934”;
 9 and

10 (ii) in subsection (e)(1), by striking
 11 “With respect to transactions other than
 12 transactions in security futures products,
 13 a” and inserting “A”.

14 (D) Section 6(b) of the Commodity Ex-
 15 change Act (7 U.S.C. 8(b)) is amended in the
 16 first sentence by striking “or section 5f”.

17 (E) Section 12(e)(2) of the Commodity Ex-
 18 change Act (7 U.S.C. 16(e)(2)) is amended—

19 (i) in subparagraph (A), by striking
 20 “an electronic trading facility excluded
 21 under section 2(e) of this Act” and insert-
 22 ing “a commodity-based swap execution fa-
 23 cility”;

24 (ii) in subparagraph (B)—

- 1 (I) by striking “, 2(d), 2(f), or
 2 2(g)” and inserting “or 2(e)”;
 3 (II) by striking “2(h) or”; and
 4 (III) by striking the period at the
 5 end and inserting “; and”; and
 6 (iii) by inserting after subparagraph
 7 (B) the following:
 8 “(C) a commodity-based swap.”.

9 **SEC. 203. REQUIRED CLEARING OF STANDARDIZED DE-**
 10 **RIVATIVES THROUGH CENTRAL COUNTER-**
 11 **PARTIES AND USE OF TRADE REPOSITORIES.**

12 (a) IN GENERAL.—The Commodity Exchange Act is
 13 amended by inserting after section 4q (7 U.S.C. 6o–1) the
 14 following:

15 **“SEC. 4r. REQUIRED CLEARING OF STANDARDIZED DERIVA-**
 16 **TIVES THROUGH CENTRAL COUNTERPAR-**
 17 **TIES AND USE OF TRADE REPOSITORIES.**

18 “(a) FINDINGS.—Congress finds that—

19 “(1) the proliferation of over-the-counter com-
 20 modity-based swaps poses unacceptable risks to the
 21 financial system;

22 “(2) clearing standardized commodity-based
 23 swaps through well-regulated central counterparties
 24 would reduce systemic risk in the financial system;

1 “(3) the markets for standardized commodity-
2 based swaps suffer from a lack of reliable and accu-
3 rate transaction information that is available to the
4 public, market participants, producers, and regu-
5 lators; and

6 “(4) weaknesses in the regulation of markets
7 for standardized commodity-based swaps have de-
8 tracted from the efficiency and transparency of trad-
9 ing in the markets and hampered the surveillance
10 and oversight of the markets.

11 “(b) PURPOSES.—The purposes of this section are—

12 “(1) to establish well-regulated markets for
13 standardized commodity-based swaps that promote
14 efficiency and transparency of trading and enhance
15 the surveillance and oversight of the markets; and

16 “(2) to promote the public interest, the protec-
17 tion of market participants, and the maintenance of
18 fair and orderly markets by ensuring—

19 “(A) the prompt and accurate clearance
20 and settlement of transactions in standardized
21 commodity-based swaps;

22 “(B) the prompt and accurate reporting of
23 transactions in commodity-based derivative in-
24 struments to a trade repository or a derivatives
25 clearing organization;

1 “(C) the establishment of linked or coordi-
2 nated facilities for clearance and settlement of
3 transactions in securities, securities options,
4 contracts of sale for future delivery and options
5 on the contracts, commodity options, and de-
6 rivatives;

7 “(D) the availability to the public, market
8 participants, producers, and regulators of reli-
9 able and accurate quotation and transaction in-
10 formation in commodity-based swaps;

11 “(E) economically efficient execution of
12 transactions in commodity-based swaps; and

13 “(F) fair competition among markets in
14 the trading of commodity-based swaps.

15 “(c) USE OF DERIVATIVES CLEARING ORGANIZA-
16 TIONS.—

17 “(1) IN GENERAL.—Any person that is a party
18 to a commodity-based swap that the Commission de-
19 termines is ‘standardized’ shall submit such instru-
20 ment for clearing to a derivatives clearing organiza-
21 tion within the period specified by the rules of the
22 Commission.

23 “(2) DEFINITION OF ‘STANDARDIZED’.—

1 “(A) IN GENERAL.—The Commission shall
2 by rule, define the term ‘standardized’ for pur-
3 poses of this section.

4 “(B) FACTORS.—In defining the term
5 ‘standardized’, the Commission shall—

6 “(i) be consistent with—

7 “(I) the public interest;

8 “(II) the protection of market
9 participants;

10 “(III) the safeguarding of com-
11 modity-based swap transactions and
12 funds;

13 “(IV) the maintenance of fair
14 competition among market partici-
15 pants and among derivatives clearing
16 organizations; and

17 “(V) the purposes of this section;

18 “(ii)(I) consult with, and consider the
19 views of, the Securities and Exchange
20 Commission and the Board of Governors of
21 the Federal Reserve System; and

22 “(II) seek to maintain comparability,
23 to the maximum extent practicable, with
24 the Securities and Exchange Commission
25 definition of ‘standardized’ for purposes of

1 section 17C of the Securities Exchange Act
2 of 1934; and

3 “(iii) to the extent it is applicable to
4 a particular commodity-based swap or
5 class of commodity-based derivative swaps,
6 consider—

7 “(I) whether a derivatives clear-
8 ing organization is prepared to clear
9 the commodity-based swap and the
10 derivatives clearing organization has
11 effective risk management systems;

12 “(II) the availability or ability to
13 facilitate standard documentation of
14 the terms of the commodity-based
15 swap;

16 “(III) the liquidity of the com-
17 modity-based swap and the underlying
18 commodity or group or index of the
19 commodity-based swap;

20 “(IV) the ability to value the
21 commodity-based swap, or underlying
22 commodity, consistently with an ac-
23 cepted pricing methodology, including
24 the availability of intraday prices; and

1 “(V) such other factors as are
2 consistent with the purposes of this
3 section.

4 “(3) EXEMPTIONS.—

5 “(A) IN GENERAL.—The Commission, by
6 rule or order, as the Commission considers ap-
7 propriate in the public interest or the protection
8 of market participants, may conditionally or un-
9 conditionally exempt from the requirements of
10 this subsection and the rules issued under this
11 subsection any person, transaction, or standard-
12 ized commodity-based swap.

13 “(B) PRIOR CONSULTATION WITH SECURI-
14 TIES AND EXCHANGE COMMISSION AND BOARD
15 OF GOVERNORS OF THE FEDERAL RESERVE
16 SYSTEM.—

17 “(i) CONSULTATION.—Before acting
18 by rule or order to exempt any person,
19 transaction, or standardized commodity-
20 based swap from this subsection, the Com-
21 mission shall consult with, and consider
22 the views of, the Securities and Exchange
23 Commission and the Board of Governors of
24 the Federal Reserve System concerning
25 whether the exemption is appropriate for

1 the reduction of risk and in the public in-
2 terest.

3 “(ii) NOTICE REQUIRED.—Forty-five
4 days prior to issuing any exemption, the
5 Commission shall send a notice to the Se-
6 curities and Exchange Commission and the
7 Board of Governors of the Federal Reserve
8 System describing such exemption.

9 “(iii) PROHIBITION ON ISSUANCE.—If
10 either the Securities and Exchange Com-
11 mission or the Board of Governors of the
12 Federal Reserve System issues a finding
13 that such an exemption does not meet the
14 standard in clause (i), the Commission
15 shall not grant the exemption.

16 “(iv) DEADLINE.—Any finding by the
17 Securities and Exchange Commission or
18 the Board of Governors of the Federal Re-
19 serve System shall be made and received in
20 writing by the Commission not later than
21 30 days after the date of receipt of a no-
22 tice of a proposed exemption by the Com-
23 mission.

24 “(v) NONDELEGATION.—Action by
25 the Securities and Exchange Commission

1 or the Board of Governors under this sub-
2 paragraph may not be delegated.

3 “(d) TRADE REPOSITORIES.—

4 “(1) USE OF TRADE REPOSITORIES.—

5 “(A) IN GENERAL.—Any person that en-
6 ters into or effects a transaction in a com-
7 modity-based swap shall submit the transaction
8 for clearing to a derivatives clearing organiza-
9 tion or report the transaction to a trade reposi-
10 tory registered in accordance with this sub-
11 section within the period specified by any rule
12 adopted under subsection (e).

13 “(B) INFORMATION.—The Commission
14 may, by rule, require any person to report to
15 derivatives clearing organizations and registered
16 trade repositories such transaction information
17 as the Commission considers appropriate to
18 permit the derivatives clearing organizations
19 and trade repositories to meet the purposes of
20 this section.

21 “(2) REGISTRATION.—A trade repository may
22 register for purposes of this subsection by filing with
23 the Commission an application in such form as the
24 Commission, by rule, may prescribe containing the
25 rules of the trade repository and such other informa-

tion and documents as the Commission, by rule, may prescribe as appropriate in the public interest, for the protection of market participants, or for the prompt and accurate collection, calculation, processing, and preparation of information regarding transactions and positions in commodity-based swap.

“(3) COMMISSION PROCEDURES FOR APPLICATIONS.—

“(A) IN GENERAL.—On the filing of an application for registration pursuant to paragraph (2), the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning the application.

“(B) ACTIONS.—Not later than 90 days after the date of the publication of the notice (or, with the consent of the applicant, a longer period), the Commission shall—

“(i) by order grant the registration; or

“(ii) institute proceedings to determine whether the registration should be denied.

“(C) PROCEDURE FOR DENIALS.—

“(i) IN GENERAL.—The proceedings described in subparagraph (B)(ii) shall—

1 “(I) include notice of the grounds
 2 for denial under consideration and an
 3 opportunity for a hearing; and

4 “(II) be concluded not later than
 5 180 days after the date of publication
 6 of notice of the filing of the applica-
 7 tion for registration.

8 “(ii) ACTIONS.—At the conclusion of
 9 the proceedings the Commission, by order,
 10 shall grant or deny the registration.

11 “(iii) EXTENSIONS.—The Commission
 12 may extend the time for the conclusion of
 13 the proceedings for—

14 “(I) not more than 60 days if the
 15 Commission—

16 “(aa) finds good cause for
 17 the extension; and

18 “(bb) publishes a description
 19 of the reasons of the Commission
 20 for the finding; or

21 “(II) with the consent of the ap-
 22 plicant, a longer period.

23 “(D) STANDARDS FOR GRANTING REG-
 24 ISTRATION.—The Commission shall grant the
 25 registration of a trade repository for purposes

of this section if the Commission finds that the trade repository is so organized, and has the capacity—

“(i) to assure the prompt, accurate, and reliable performance of the functions of a trade repository;

“(ii) to comply with this Act (including rules and regulations issued under this Act); and

“(iii) to carry out the functions of a trade repository in a manner consistent with the purposes of this section.

“(E) STANDARD FOR DENIAL OF REGISTRATION.—The Commission shall deny the registration of a trade repository if the Commission does not make a finding described in subparagraph (D).

“(4) WITHDRAWAL OF REGISTRATION.—

“(A) IN GENERAL.—A registered trade repository may, on such terms and conditions as the Commission considers appropriate in the public interest or for the protection of market participants, withdraw from registration by filing a written notice of withdrawal with the Commission.

1 “(B) CANCELLATION.—If the Commission
 2 finds that any trade repository is no longer in
 3 existence or has ceased to do business in the ca-
 4 pacity specified in the application of the trade
 5 repository for registration, the Commission, by
 6 order, shall cancel the registration.

7 “(5) ACCESS TO TRADE REPOSITORY SERV-
 8 ICES.—

9 “(A) NOTICE OF PROHIBITION OR LIMITA-
 10 TION ON ACCESS.—

11 “(i) IN GENERAL.—If any registered
 12 trade repository prohibits or limits any
 13 person access to services offered, directly
 14 or indirectly, by the trade repository, the
 15 registered trade repository shall promptly
 16 file notice of the prohibition or limitation
 17 with the Commission.

18 “(ii) CONTENT.—A notice under
 19 clause (i) shall be in such form and contain
 20 such information as the Commission, by
 21 rule, may prescribe as appropriate in the
 22 public interest or for the protection of in-
 23 vestors.

24 “(B) REVIEW BY COMMISSION.—Any pro-
 25 hibition or limitation on access to services with

1 respect to which a registered trade repository is
2 required by subparagraph (A) to file notice
3 shall be subject to review by the Commission
4 on—

5 “(i) the motion of the Commission; or

6 “(ii) application by any person ag-
7 grieved by the prohibition or limitation
8 filed—

9 “(I) not later than 30 days after
10 the date on which the notice described
11 in subparagraph (A) has been filed
12 with the Commission and received by
13 the aggrieved person; or

14 “(II) within such longer period
15 as the Commission may determine.

16 “(C) STAYS.—

17 “(i) IN GENERAL.—Application to the
18 Commission for review, or the institution
19 of review by the Commission on the motion
20 of the Commission, shall not operate as a
21 stay of the prohibition or limitation, unless
22 the Commission otherwise orders, sum-
23 marily or after notice and opportunity for
24 hearing on the question of a stay.

1 “(ii) HEARING.—A hearing under
2 clause (i) may consist solely of the submis-
3 sion of affidavits or presentation of oral ar-
4 guments.

5 “(iii) EXPEDITED PROCEDURE.—The
6 Commission shall establish for appropriate
7 cases an expedited procedure for consider-
8 ation and determination of the question of
9 a stay.

10 “(D) STANDARDS OF REVIEW.—

11 “(i) DISMISSAL OF PROCEEDINGS.—In
12 any proceeding to review the prohibition or
13 limitation of any person to access to serv-
14 ices offered by a registered trade reposi-
15 tory, the Commission, by order, shall dis-
16 miss the proceeding if the Commission
17 finds, after notice and opportunity for
18 hearing, that—

19 “(I) the prohibition or limitation
20 is consistent with this Act (including
21 rules and regulations); and

22 “(II) the person has not been
23 discriminated against unfairly.

24 “(ii) ACCESS TO SERVICES.—If the
25 Commission does not make a finding de-

scribed in clause (i) or the Commission finds that the prohibition or limitation imposes any burden on competition that is not appropriate in furtherance of the purposes of this Act, the Commission, by order, shall—

“(I) set aside the prohibition or limitation; and

“(II) require the registered trade repository to permit the person access to the services offered by the registered trade repository to which the prohibition or limitation applied.

“(6) ADMINISTRATIVE PROCEEDING AUTHORITY.—The Commission, by order, may censure or place limitations on the activities, functions, or operations of any registered trade repository or suspend for a period not exceeding 12 months or revoke the registration of any trade repository, if the Commission finds, on the record after notice and opportunity for hearing, that—

“(A) the censure, placing of limitations, suspension, or revocation is appropriate in the public interest, for the protection of market

1 participants, or otherwise in furtherance of the
 2 purposes of this Act; and

3 “(B) the trade repository has violated or is
 4 unable to comply with any provision of this Act
 5 (including rules or regulations).

6 “(7) RULEMAKING AUTHORITY.—No registered
 7 trade repository shall, directly or indirectly, engage
 8 in any activity as a trade repository in contravention
 9 of such rules and regulations as the Commission
 10 may prescribe—

11 “(A) as appropriate in the public interest;

12 “(B) for the protection of market partici-
 13 pants; or

14 “(C) otherwise in furtherance of the pur-
 15 poses of this Act, including to ensure that all
 16 persons may obtain on terms that are fair and
 17 reasonable and not unreasonably discriminatory
 18 such transaction and position information for
 19 commodity-based swaps as is disseminated by
 20 any derivatives clearing organization or trade
 21 repository.

22 “(8) CONSULTATION.—

23 “(A) IN GENERAL.—Prior to adopting any
 24 rules applicable to trade repositories pursuant
 25 to subsection (g), the Commission shall consult

1 with and consider the views of the Securities
2 and Exchange Commission.

3 “(B) COMPARABILITY.—The Commission
4 and the Securities and Exchange Commission
5 shall seek to maintain comparability, to the
6 maximum extent practicable, of applicable re-
7 spective recordkeeping and reporting require-
8 ments for trade repositories.

9 “(e) TIMING.—The Commission may by rule specify
10 the date by which persons are required—

11 “(1) to submit transactions in standardized
12 commodity-based swaps for clearing to a derivatives
13 clearing organization pursuant to subsection (c); and

14 “(2)(A) to submit transactions in commodity-
15 based swaps for clearing to a derivatives clearing or-
16 ganization; or

17 “(B) to report transactions in the commodity-
18 based derivative instruments to a registered trade
19 repository pursuant to subsection (d).

20 “(f) COLLECTION, CONSOLIDATION, AND DISSEMINA-
21 TION OF INFORMATION ON TRANSACTIONS AND POSI-
22 TIONS IN COMMODITY-BASED SWAPS.—

23 “(1) COMMISSION ACTION REQUIRED.—The
24 Commission shall, consistent with the public inter-
25 est, the protection of market participants, the main-

1 tenance of fair and orderly markets, and the pur-
 2 poses of this section, use the authority of the Com-
 3 mission under this Act to facilitate—

4 “(A) the collection, consolidation, and dis-
 5 semination of information on transactions and
 6 positions in commodity-based swaps; and

7 “(B) the establishment of coordinated fa-
 8 cilities for the consolidation of information on
 9 transactions and positions in commodity-based
 10 swaps.

11 “(2) ACTIONS REQUIRED BY REGISTERED ENTI-
 12 TIES.—The Commission, by rule, regulation, or
 13 order, may require each derivatives clearing organi-
 14 zation that clears transactions in commodity-based
 15 swaps, and each registered trade repository reg-
 16 istered or applying to become registered, in such
 17 form and frequency as the Commission shall pre-
 18 scribe as appropriate in the public interest, for the
 19 protection of market participants, or otherwise in
 20 furtherance of the purposes of this Act—

21 “(A) to disseminate certain transaction or
 22 position information concerning commodity-
 23 based swaps; and

24 “(B) to ensure the prompt, accurate, reli-
 25 able, and fair collection, processing, distribu-

1 tion, and publication of information with re-
 2 spect to transactions and positions, as appro-
 3 priate, cleared by or reported to the derivatives
 4 clearing organization or the registered trade re-
 5 pository.

6 “(g) RECORDS, REPORTS, AND EXAMINATIONS.—

7 “(1) IN GENERAL.—Each registered trade re-
 8 pository shall make and keep for prescribed periods
 9 such records, furnish such copies of the records, and
 10 make and disseminate such reports as the Commis-
 11 sion, by rule, prescribes as appropriate in the public
 12 interest, or otherwise in furtherance of the purposes
 13 of this Act.

14 “(2) EXAMINATIONS.—All records with regard
 15 to commodity-based swaps of a registered trade re-
 16 pository shall be subject at any time to such reason-
 17 able periodic, special, or other examinations by rep-
 18 resentatives of the Commission as the Commission
 19 considers appropriate in the public interest, for the
 20 protection of market participants, or otherwise in
 21 furtherance of the purposes of this Act.”.

22 (b) DERIVATIVES CLEARING ORGANIZATIONS.—Sec-
 23 tion 5b of the Commodity Exchange Act (7 U.S.C. 7a-
 24 1) is amended—

1 (1) by striking subsections (a) and (b) and in-
2 serting the following:

3 “(a) REGISTRATION REQUIREMENT.—It shall be un-
4 lawful for a derivatives clearing organization, unless reg-
5 istered with the Commission, directly or indirectly to make
6 use of the mails or any means or instrumentality of inter-
7 state commerce to perform the functions of a derivatives
8 clearing organization with respect to a contract of sale of
9 a commodity for future delivery (or option on such a con-
10 tract) or option on a commodity, or a commodity-based
11 swap, in each case unless the contract, option, or com-
12 modity-based swap is not required to be cleared under this
13 Act.

14 “(b) VOLUNTARY REGISTRATION.—A derivatives
15 clearing organization that clears agreements, contracts, or
16 transactions that are not required to be cleared under this
17 Act may register with the Commission as a derivatives
18 clearing organization.”.

19 (2) in subsection (c)—

20 (A) by striking paragraph (1) and insert-
21 ing the following:

22 “(1) APPLICATION.—A person desiring to reg-
23 ister as a derivatives clearing organization shall sub-
24 mit to the Commission an application in such form
25 and containing the rules of the derivatives clearing

1 organization and such other information and docu-
 2 ments as the Commission, by rule, may prescribe as
 3 appropriate in the public interest or for the purpose
 4 of making the determinations required for approval
 5 under this section.”;

6 (B) in paragraph (2)—

7 (i) by striking subparagraph (B) and
 8 inserting the following:

9 “(B) FINANCIAL RESOURCES.—The appli-
 10 cant shall demonstrate that the applicant has
 11 adequate financial, operational, and managerial
 12 resources to discharge the responsibilities of a
 13 derivatives clearing organization and to manage
 14 all associated risks.”; and

15 (ii) by adding at the end the fol-
 16 lowing:

17 “(O) MARKET PARTICIPANT ACCESS.—The
 18 applicant shall establish appropriate standards
 19 to ensure open and fair access to all persons
 20 that meet the ongoing and continuing partici-
 21 pant eligibility standards of the organization
 22 with respect to commodity-based swaps and to
 23 accept for clearing from the participants all
 24 commodity-based swaps that meet the product
 25 eligibility standards of the organization, regard-

1 less of where the transactions are executed.”;
 2 and

3 (C) by adding at the end the following:

4 “(4) COMMISSION PROCEDURES FOR GRANTING
 5 REGISTRATION TO DERIVATIVES CLEARING ORGANI-
 6 ZATIONS FOR CLEARING COMMODITY-BASED
 7 SWAPS.—

8 “(A) IN GENERAL.—The Commission
 9 shall, on the filing of an application for reg-
 10 istration pursuant to paragraph (2) for pur-
 11 poses of clearing commodity-based swaps, pub-
 12 lish notice of the filing and afford interested
 13 persons an opportunity to submit written data,
 14 views, and arguments concerning the applica-
 15 tion.

16 “(B) ACTIONS.—Not later than 90 days
 17 after the date of the publication of the notice
 18 (or, with the consent of the applicant, a longer
 19 period), the Commission shall—

20 “(i) by order grant the registration; or

21 “(ii) institute proceedings to deter-
 22 mine whether registration should be de-
 23 nied.

24 “(C) PROCEEDINGS.—

1 “(i) IN GENERAL.—The proceedings
2 described in subparagraph (B)(ii) shall—

3 “(I) include notice of the grounds
4 for denial under consideration and op-
5 portunity for hearing; and

6 “(II) be concluded not later than
7 180 days after the date of publication
8 of notice of the filing of the applica-
9 tion for registration.

10 “(ii) ACTIONS.—At the conclusion of
11 the proceedings the Commission, by order,
12 shall grant or deny the registration.

13 “(iii) EXTENSIONS.—The Commission
14 may extend the time for the conclusion of
15 the proceedings for—

16 “(I) not more than 60 days if the
17 Commission—

18 “(aa) finds good cause for
19 the extension; and

20 “(bb) publishes the reasons
21 of the Commission for the find-
22 ing; or

23 “(II) with the consent of the ap-
24 plicant, a longer period.

1 “(iv) STANDARD FOR REGISTRA-
2 TION.—

3 “(I) IN GENERAL.—The Commis-
4 sion shall grant the registration of a
5 derivatives clearing organization if the
6 Commission finds that the derivatives
7 clearing organization is so organized,
8 and has the capacity, to be able—

9 “(aa) to ensure the prompt,
10 accurate, and reliable perform-
11 ance of the functions of a deriva-
12 tives clearing organization;

13 “(bb) to comply with this
14 Act (including rules and regula-
15 tions); and

16 “(cc) to carry out the func-
17 tions of a derivatives clearing or-
18 ganization in a manner con-
19 sistent with the purposes and
20 core principles of this section.

21 “(II) DENIAL.—The Commission
22 shall deny the registration of a deriva-
23 tives clearing organization if the Com-
24 mission does not make a finding de-
25 scribed in subclause (I).

1 “(5) WITHDRAWAL OF REGISTRATION.—For
 2 purposes of clearing commodity-based swaps, a de-
 3 rivatives clearing organization may, on such terms
 4 and conditions as the Commission considers appro-
 5 priate in the public interest or for the protection of
 6 market participants, withdraw from registration by
 7 filing a written notice of withdrawal with the Com-
 8 mission.

9 “(6) ACCESS TO DERIVATIVES CLEARING ORGA-
 10 NIZATION TO CLEAR COMMODITY-BASED SWAPS.—

11 “(A) NOTICE OF PROHIBITION OR LIMITA-
 12 TION.—

13 “(i) IN GENERAL.—For purposes of
 14 clearing commodity-based swaps, if any de-
 15 rivatives clearing organization prohibits or
 16 limits any person access to services offered,
 17 directly or indirectly, by the derivatives
 18 clearing organization, the derivatives clear-
 19 ing organization shall promptly file notice
 20 of the prohibition or denial with the Com-
 21 mission.

22 “(ii) CONTENTS.—The notice shall be
 23 in such form and contain such information
 24 as the Commission, by rule, may prescribe
 25 as appropriate in the public interest.

“(B) REVIEW BY COMMISSION.—Any prohibition or limitation on access to services with respect to which a derivatives clearing organization is required by subparagraph (A) to file notice shall be subject to review by the Commission on—

“(i) the motion of the Commission; or

“(ii) application by any person aggrieved by the prohibition or limitation filed—

“(I) not later than 30 days after the date the notice described in subparagraph (A) has been filed with the Commission and received by the aggrieved person; or

“(II) within such longer period as the Commission may determine.

“(C) STAYS.—

“(i) IN GENERAL.—Application to the Commission for review, or the institution of review by the Commission on the motion of the Commission, shall not operate as a stay of the prohibition or limitation, unless the Commission otherwise orders, sum-

1 marily or after notice and opportunity for
2 hearing on the question of a stay.

3 “(ii) HEARING.—A hearing under
4 clause (i) may consist solely of the submis-
5 sion of affidavits or presentation of oral ar-
6 guments.

7 “(iii) EXPEDITED PROCEDURE.—The
8 Commission shall establish for appropriate
9 cases an expedited procedure for consider-
10 ation and determination of the question of
11 a stay.

12 “(D) ACTIONS.—

13 “(i) DISMISSAL OF PROCEEDINGS.—
14 For purposes of clearing commodity-based
15 swaps, in any proceeding to review the pro-
16 hibition or limitation of any person in re-
17 spect of access to services offered by a de-
18 rivatives clearing organization, the Com-
19 mission, by order, shall dismiss the pro-
20 ceeding if the Commission finds, after no-
21 tice and opportunity for hearing, that—

22 “(I) the prohibition or limitation
23 is consistent with this Act (including
24 rules and regulations); and

1 “(II) the person has not been
2 discriminated against unfairly.

3 “(ii) ACCESS TO SERVICES.—If the
4 Commission does not make a finding de-
5 scribed in clause (i), or if the Commission
6 finds that the prohibition or limitation im-
7 poses any burden on competition not ap-
8 propriate in furtherance of the purposes of
9 this Act, the Commission, by order, shall—

10 “(I) set aside the prohibition or
11 limitation; and

12 “(II) require the registered trade
13 repository to permit the person access
14 to the services offered by the deriva-
15 tives clearing organization to which
16 the prohibition or limitation applied.

17 “(7) ADMINISTRATIVE PROCEEDING AUTHOR-
18 ITY.—The Commission, by order, may censure or
19 place limitations on the activities, functions, or oper-
20 ations of any derivatives clearing organization that
21 is clearing commodity-based swaps, or suspend for a
22 period not exceeding 12 months or revoke the reg-
23 istration of any derivatives clearing organization, if
24 the Commission finds, on the record after notice and
25 opportunity for hearing, that—

1 “(A) the censure, placing of limitations,
 2 suspension, or revocation is appropriate in the
 3 public interest and for the protection of market
 4 participants or otherwise in furtherance of the
 5 purposes of this Act; and

6 “(B) the derivatives clearing organization
 7 has violated or is unable to comply with any
 8 provision of this Act (including rules or regula-
 9 tions).

10 “(8) RULEMAKING AUTHORIZATION.—For pur-
 11 poses of clearing commodity-based swaps, no deriva-
 12 tives clearing organization shall, directly or indi-
 13 rectly, engage in any activity as a derivatives clear-
 14 ing organization in contravention of such rules and
 15 regulations as the Commission may prescribe—

16 “(A) as appropriate in the public interest;

17 “(B) for the protection of market partici-
 18 pants; or

19 “(C) otherwise in furtherance of the pur-
 20 poses of this Act.

21 “(9) RECORDS, REPORTS, AND EXAMINA-
 22 TIONS.—

23 “(A) IN GENERAL.—Each derivatives
 24 clearing organization shall, for purposes of
 25 clearing commodity-based swaps, make and

1 keep for prescribed periods such records, fur-
 2 nish such copies of the records, and make and
 3 disseminate such reports as the Commission, by
 4 rule, prescribes as appropriate in the public in-
 5 terest, or otherwise in furtherance of the pur-
 6 poses of this Act.

7 “(B) EXAMINATIONS.—For purposes of
 8 clearing commodity-based derivative instru-
 9 ments, all records of a derivatives clearing orga-
 10 nization shall be subject at any time to such
 11 reasonable periodic, special, or other examina-
 12 tions by representatives of the Commission as
 13 the Commission considers appropriate in the
 14 public interest, for the protection of market
 15 participants, or otherwise in furtherance of the
 16 purposes of this Act.”.

17 **SEC. 204. PRUDENTIAL SUPERVISION AND REGULATION OF**
 18 **SIGNIFICANT COMMODITY-BASED DERIVA-**
 19 **TIVES MARKET PARTICIPANTS AND INCEN-**
 20 **TIVES FOR TRADING ON REGULATED EX-**
 21 **CHANGES.**

22 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
 23 is amended by inserting after section 4r (as added by sec-
 24 tion 203(a)) the following:

1 **“SEC. 4s. REGULATION OF SIGNIFICANT COMMODITY-**
2 **BASED DERIVATIVES MARKET PARTICI-**
3 **PANTS.**

4 “(a) DEFINITION OF APPROPRIATE REGULATORY
5 AUTHORITY.—In this section, the term ‘appropriate regu-
6 latory authority’ means—

7 “(1) the appropriate Federal banking agency
8 (as defined in section 1813(q) of title 12, United
9 States Code), with respect to a significant com-
10 modity-based derivatives market participant that is
11 an insured depository institution (as defined in sec-
12 tion 1813(c) of title 12, United States Code), but
13 not an affiliate of an insured depository institution;

14 “(2) the Federal Housing Finance Agency, with
15 respect to a significant commodity-based derivatives
16 market participant that is a regulated entity (as de-
17 fined in section 4502 of title 12, United States
18 Code);

19 “(3) the Commission, with respect to a signifi-
20 cant commodity-based derivatives market participant
21 that is—

22 “(A) a futures commission merchant or an
23 introducing broker, other than a futures com-
24 mission merchant or an introducing broker reg-
25 istered pursuant to section 4f(a) or an affiliate
26 of an insured depository institution; or

1 “(B) a commodity pool operator or com-
 2 modity trading advisor, other than an affiliate
 3 of an insured depository institution; and

4 “(4) the Securities and Exchange Commission,
 5 with respect to a significant commodity-based de-
 6 rivatives market participant—

7 “(A) that is a broker or dealer, as those
 8 terms are defined in section 3(a) of the Securi-
 9 ties Exchange Act of 1934 (15 U.S.C. 78c(a))
 10 (other than a broker or dealer registered under
 11 section 15(b)(11) of that Act (15 U.S.C.
 12 78o(b)(11)) that is not an affiliate of an in-
 13 sured depository institution); or

14 “(B) for which there is not another appro-
 15 priate regulatory authority otherwise specified
 16 in this subsection.

17 “(b) REGISTRATION BY SIGNIFICANT COMMODITY-
 18 BASED DERIVATIVES MARKET PARTICIPANTS.—It shall
 19 be unlawful for any significant commodity-based deriva-
 20 tives market participant to make use of the mails or any
 21 means or instrumentality of interstate commerce to effect
 22 any transactions in, or to induce or attempt to induce a
 23 transaction in, any commodity-based swap unless the sig-
 24 nificant commodity-based derivatives market participant
 25 has registered in accordance with subsection (c).

1 “(c) MANNER OF REGISTRATION OF SIGNIFICANT
2 COMMODITY-BASED DERIVATIVES MARKET PARTICI-
3 PANTS.—

4 “(1) IN GENERAL.—A significant commodity-
5 based derivatives market participant subject to the
6 registration requirement of subsection (b) may reg-
7 ister by filing with the Commission an application
8 for registration in such form and containing such in-
9 formation and documents concerning the significant
10 commodity-based derivatives market participant and
11 any persons associated with the significant com-
12 modity-based derivatives market participant as the
13 Commission, by rule, regulation, or order, may pre-
14 scribe as appropriate in the public interest or for the
15 protection of market participants.

16 “(2) ACTION BY THE COMMISSION.—

17 “(A) IN GENERAL.—Not later than 45
18 days after the date of filing of an application
19 under paragraph (1) (or, with the consent of
20 the applicant, a longer period), the Commission
21 shall—

22 “(i) by order grant registration; or

23 “(ii) institute proceedings in accord-
24 ance with subparagraph (B) to determine
25 whether the registration should be denied.

1 “(B) PROCEEDINGS.—

2 “(i) IN GENERAL.—Proceedings initi-
3 ated under subparagraph (B)(ii) shall in-
4 clude notice of the grounds for denial
5 under consideration and opportunity for
6 hearing.

7 “(ii) CONCLUSION.—Not later than
8 120 days after the date of the filing of the
9 application for registration, the Commis-
10 sion shall conclude the proceedings and, by
11 order, grant or deny the registration.

12 “(iii) EXTENSION.—The Commission
13 may extend the time for the conclusion of
14 a proceedings for up to 90 days (or, with
15 the consent of the applicant, a longer pe-
16 riod) if the Commission finds good cause
17 for the extension and publishes the reasons
18 for the extension.

19 “(C) BASIS FOR DETERMINATION.—

20 “(i) IN GENERAL.—The Commission
21 shall grant the registration of a significant
22 commodity-based derivatives market partic-
23 ipant if the Commission finds that the re-
24 quirements of this section are satisfied.

1 “(ii) DENIAL.—The Commission shall
 2 deny the registration if the Commission
 3 does not make a finding under clause (i) or
 4 if the Commission finds that if the appli-
 5 cant were registered, the registration of
 6 the applicant would be subject to suspen-
 7 sion or revocation under subsection (f).

8 “(3) WITHDRAWAL.—Any person that has filed
 9 an application pursuant to paragraph (1) may, on
 10 such terms and conditions as the Commission deter-
 11 mines appropriate in the public interest, for the pro-
 12 tection of market participants, or otherwise in fur-
 13 therance of the purposes of this Act, withdraw the
 14 application by filing a written withdrawal with the
 15 Commission.

16 “(d) BUSINESS CONDUCT REQUIREMENTS.—

17 “(1) DEFINITION OF REGULATED PERSON.—In
 18 this subsection, the term ‘regulated person’ means—

19 “(A) a significant commodity-based deriva-
 20 tives market participant; and

21 “(B) any other class of persons that the
 22 Commission may determine by rule, regulation,
 23 or order to be subject to this subsection.

24 “(2) PROHIBITION.—It shall be unlawful for
 25 any regulated person to make use of the mails or

1 any means or instrumentality of interstate commerce
2 to effect any transaction in, or to induce or attempt
3 to induce a transaction in, any commodity-based
4 swap, unless the regulated person complies with such
5 business conduct requirements as the Commission
6 and the Securities and Exchange Commission, in
7 consultation with the appropriate regulatory authori-
8 ties, may jointly prescribe by rule, regulation, or
9 order, as appropriate in the public interest, for the
10 protection of market participants, and otherwise in
11 furtherance of the purposes of this Act.

12 “(3) REQUIREMENTS.—Business conduct re-
13 quirements prescribed under this subsection shall—

14 “(A) establish the standard of care re-
15 quired for a regulated person to verify that any
16 counterparty meets the eligibility standards for
17 an eligible contract participant or qualified in-
18 stitutional buyer (as defined in section 3(a) of
19 the Securities Exchange Act of 1934 (15
20 U.S.C. 78c(a)));

21 “(B) require disclosure by the regulated
22 person to any counterparty to the transaction
23 of—

1 “(i) material product-specific informa-
2 tion about the risks and characteristics of
3 the commodity-based swap;

4 “(ii) the source and amount of any
5 fees or other material remuneration that
6 the regulated person would directly or indi-
7 rectly expect to receive in connection with
8 the commodity-based swap; and

9 “(iii) any other material incentives or
10 conflicts of interest that the regulated per-
11 son may have in connection with the com-
12 modity-based swap;

13 “(C) establish a minimum standard of con-
14 duct for a regulated person with respect to any
15 counterparty, other than a qualified institu-
16 tional buyer (as defined in section 3(a) of the
17 Securities Exchange Act of 1934 (15 U.S.C.
18 78c(a))), for—

19 “(i) providing disclosure of the gen-
20 eral risks and characteristics of any com-
21 modity-based swap;

22 “(ii) communicating in a fair and bal-
23 anced manner based on principles of fair
24 dealing and good faith;

1 “(iii) assessing the appropriateness of
 2 any commodity-based swap for the
 3 counterparty, except that in the case of a
 4 counterparty that is an eligible contract
 5 participant specified in clause (iv), the reg-
 6 ulated person may rely on the representa-
 7 tions described in clause (iv)(VI) that the
 8 transaction is appropriate for the
 9 counterparty; and

10 “(iv) with respect to a counterparty
 11 that is an eligible contract participant
 12 (within the meaning of subclause (I) or
 13 (II) of section 1a(15)(A)(vii)), having a
 14 reasonable basis to believe that the
 15 counterparty has an independent rep-
 16 resentative that—

17 “(I) has sufficient knowledge to
 18 evaluate the transaction and risks;

19 “(II) is not subject to a statutory
 20 disqualification;

21 “(III) is independent of the regu-
 22 lated person;

23 “(IV) undertakes a duty to act in
 24 the best interests of the counterparty

1 that the independent representative
2 represents;

3 “(V) makes appropriate disclo-
4 sures; and

5 “(VI) will provide written rep-
6 resentations to the eligible contract
7 participant regarding fair pricing and
8 the appropriateness of the trans-
9 action;

10 “(D) require the availability of information
11 about any commodity referenced in a com-
12 modity-based swap or on which the commodity-
13 based swap is based; and

14 “(E) establish such other standards and
15 requirements as the Commission, acting jointly
16 with the Securities and Exchange Commission
17 and in consultation with the appropriate regu-
18 latory authorities, may determine are appro-
19 priate in the public interest, for the protection
20 of market participants, or otherwise in further-
21 ance of the purposes of this Act.

22 “(e) STATUTORY DISQUALIFICATION.—Except to the
23 extent otherwise specifically provided by rule, regulation,
24 or order of the Commission, it shall be unlawful for a sig-
25 nificant commodity-based derivatives market participant

1 to permit any associated person of the significant com-
 2 modity-based derivatives market participant who is subject
 3 to a statutory disqualification to effect or be involved in
 4 effecting transactions in commodity-based swaps on behalf
 5 of the significant commodity-based derivatives market par-
 6 ticipant, if the significant commodity-based derivatives
 7 market participant knew, or in the exercise of reasonable
 8 care should have known, of the statutory disqualification.

9 “(f) ADMINISTRATIVE PROCEEDING AUTHORITY.—

10 “(1) IN GENERAL.—The Commission, by order,
 11 shall censure, place limitations on the activities,
 12 functions, or operations of, or reject the filing of any
 13 significant commodity-based derivatives market par-
 14 ticipant that has registered with the Commission
 15 pursuant to subsection (d) if the Commission finds,
 16 on the record after notice and opportunity for hear-
 17 ing, that—

18 “(A) the censure, placing of limitations, or
 19 rejection is in the public interest; and

20 “(B) the significant commodity-based de-
 21 rivatives market participant, or any person as-
 22 sociated with the significant commodity-based
 23 derivatives market participant effecting or in-
 24 volved in effecting transactions in commodity-
 25 based swaps on behalf of the significant com-

1 commodity-based derivatives market participant,
2 whether prior or subsequent to becoming so as-
3 sociated, has committed or omitted any act, or
4 is subject to an order or finding, described in
5 paragraphs (2) and (3) of section 8a.

6 “(2) ASSOCIATED PERSONS.—With respect to
7 any person who is associated, who is seeking to be-
8 come associated, or who, at the time of the alleged
9 misconduct, was associated or was seeking to become
10 associated with a significant commodity-based de-
11 rivatives market participant for the purpose of ef-
12 fecting or being involved in effecting commodity-
13 based swaps on behalf of the significant commodity-
14 based derivatives market participant, the Commis-
15 sion, by order, shall censure, place limitations on the
16 activities or functions of the person, or suspend for
17 a period not exceeding 12 months, or bar the person
18 from being associated with a significant commodity-
19 based derivatives market participant, if the Commis-
20 sion finds, on the record after notice and oppor-
21 tunity for a hearing, that—

22 “(A) the censure, placing of limitations,
23 suspension, or bar is in the public interest; and

1 “(B) the person has committed or omitted
 2 any act, or is subject to an order or finding, de-
 3 scribed in paragraphs (2) and (3) of section 8a.

4 “(3) PROHIBITION.—It shall be unlawful—

5 “(A) for any person with respect to whom
 6 an order under paragraph (2) is in effect, with-
 7 out the consent of the Commission, willfully to
 8 become, or to be, associated with a significant
 9 commodity-based derivatives market participant
 10 in contravention of the order; or

11 “(B) for any significant commodity-based
 12 derivatives market participant to permit a per-
 13 son described in subparagraph (A), without the
 14 consent of the Commission, to become or re-
 15 main, a person associated with the significant
 16 commodity-based derivatives market participant
 17 in contravention of an order under paragraph
 18 (2), if the significant commodity-based deriva-
 19 tives market participant knew, or in the exer-
 20 cise of reasonable care should have known, of
 21 the order.

22 “(g) CAPITAL AND MARGIN REQUIREMENTS.—

23 “(1) IN GENERAL.—It shall be unlawful for any
 24 person to conduct business as a significant com-
 25modity-based derivatives market participant unless

1 the person meets at all times such minimum capital
2 and margin requirements as the appropriate regu-
3 latory authorities shall jointly prescribe, not later
4 than 180 days after the enactment of this section,
5 by rule or regulation as appropriate in the public in-
6 terest or for the maintenance of fair and orderly
7 markets and consistent with the purposes of this Act
8 to provide safeguards with respect to the financial
9 responsibility and related practices of the significant
10 commodity-based derivatives market participant.

11 “(2) CAPITAL REQUIREMENTS.—In setting cap-
12 ital requirements for significant commodity-based
13 derivatives market participants, the appropriate reg-
14 ulatory authorities shall consider among other
15 things—

16 “(A) the liquidity of each commodity-based
17 swap, including whether the commodity-based
18 swap—

19 “(i) is traded on a liquid market; and

20 “(ii) is centrally cleared; and

21 “(B) whether the commodity-based swap is
22 used to offset or hedge another instrument or
23 asset owned by such significant commodity-
24 based derivatives market participant.

1 “(3) MARGIN REQUIREMENTS.—The appro-
2 priate regulatory authorities shall jointly prescribe
3 margin requirements, which may permit the use of
4 noncash collateral, that apply to commodity-based
5 swaps entered into by a significant commodity-based
6 derivatives market participant, as the appropriate
7 regulatory authorities jointly determine to be appro-
8 priate for the purpose of, at a minimum—

9 “(A) preserving the financial integrity of
10 markets trading commodity-based swaps; and

11 “(B) preventing systemic risk.

12 “(4) COMMISSION RULES.—Nothing in this Act
13 prevents the Commission from prescribing capital
14 and margin requirements that are higher or more
15 restrictive than the joint rules adopted under this
16 subsection for significant commodity-based deriva-
17 tives market participants for which the Commission
18 is the appropriate regulatory authority.

19 “(h) ENFORCEMENT AUTHORITY.—Each appropriate
20 regulatory authority shall have sole authority to enforce
21 compliance with the rules adopted under subsection (g)
22 in the case of each significant derivatives market partici-
23 pant for which the regulatory authority is the appropriate
24 regulatory authority, as defined in subsection (a).”.

1 **SEC. 205. RECORDKEEPING AND REPORTING REQUIRE-**
2 **MENTS FOR DERIVATIVES MARKET PARTICI-**
3 **PANTS.**

4 (a) IN GENERAL.—Section 4g of the Commodity Ex-
5 change Act (7 U.S.C. 6g) is amended by striking “SEC.
6 4g.” and all that follows through the end of subsection
7 (a) and inserting the following:

8 **“SEC. 4g. RECORDKEEPING AND REPORTING REQUIRE-**
9 **MENTS FOR COMMODITY-BASED DERIVA-**
10 **TIVES MARKET PARTICIPANTS.**

11 “(a) IN GENERAL.—Each person registered under
12 this Act as a futures commission merchant, introducing
13 broker, floor broker, floor trader, or significant com-
14 modity-based derivatives market participant (or any other
15 person that engages in transactions in commodity-based
16 swaps as the Commission, by rule, regulation or order,
17 designates) shall—

18 “(1) make such reports as are required by the
19 Commission regarding the transactions and positions
20 of the person, and the transactions and positions of
21 the customers of the person, in commodities for fu-
22 ture delivery on any board of trade in the United
23 States or elsewhere, in any significant price dis-
24 covery contract traded or executed on an electronic
25 trading facility, in any agreement, contract, or
26 transaction that is treated by a derivatives clearing

1 organization, whether registered or not registered, as
 2 fungible with a significant price discovery contract,
 3 and in any commodity-based swap;

4 “(2) keep books and records pertaining to those
 5 transactions and positions in such form and manner
 6 and for such period as may be required by the Com-
 7 mission; and

8 “(3) make those books and records available for
 9 inspection by any representative of the Commission
 10 or the Department of Justice.”.

11 (b) DAILY TRADING RECORD.—Section 4g of the
 12 Commodity Exchange Act (7 U.S.C. 6g) is amended—

13 (1) by striking subsections (c) and (d) and in-
 14 serting the following:

15 “(c) DAILY TRADING RECORDS.—

16 “(1) IN GENERAL.—Each floor broker, intro-
 17 ducing broker, futures commission merchant, signifi-
 18 cant commodity-based derivatives market partici-
 19 pant, and any other person designated by the Com-
 20 mission pursuant to subsection (a) shall maintain
 21 daily trading records for each customer in such man-
 22 ner and form as to be identifiable with the trades re-
 23 ferred to in subsection (b).

24 “(2) FORM AND REPORTS.—

1 “(A) IN GENERAL.—Daily trading records
2 shall be maintained in a form suitable to the
3 Commission for such period as may be required
4 by the Commission.

5 “(B) REPORTS.—Reports shall be made
6 from the records maintained at such time, in
7 such manner, and at such places as the Com-
8 mission may prescribe by rule, order, or regula-
9 tion in order to protect the public interest and
10 the interest of persons trading in commodity fu-
11 tures or commodity-based swaps.”; and

12 (2) by redesignating subsections (e) and (f) as
13 subsections (d) and (e), respectively.

14 **SEC. 206. PROHIBITION OF MARKET MANIPULATION,**
15 **FRAUD, AND OTHER MARKET ABUSES.**

16 (a) POSITION LIMITS.—

17 (1) IN GENERAL.—Section 4a(a) of the Com-
18 modity Exchange Act (7 U.S.C. 6a(a)) is amended—

19 (A) by striking “SEC. 4a. (a) Excessive”
20 and inserting the following:

21 **“SEC. 4a. EXCESSIVE SPECULATION AS BURDEN ON INTER-**
22 **STATE COMMERCE.**

23 “(a) EXCESSIVE SPECULATION.—

24 “(1) IN GENERAL.—Excessive”;

1 (B) by designating the first through sixth
 2 sentences as paragraphs (1) through (6), re-
 3 spectively;

4 (C) in paragraph (1) (as so designated), by
 5 striking “on electronic trading facilities with re-
 6 spect to a significant price discovery contract”
 7 and inserting “commodity-based swaps that
 8 perform or affect a significant price discovery
 9 function”;

10 (D) in paragraph (2) (as so designated)—

11 (i) by inserting “, including any group
 12 or class of traders,” after “held by any
 13 person”; and

14 (ii) by striking “on an electronic trad-
 15 ing facility with respect to a significant
 16 price discovery contract,” and inserting
 17 “commodity-based swaps that perform or
 18 affect a significant price discovery func-
 19 tion,”; and

20 (E) by adding at the end the following:

21 “(7) AGGREGATE POSITION LIMITS AND POSI-
 22 TION REPORTING FOR COMMODITY-BASED SWAPS.—
 23 The Commission may, by rule or regulation, estab-
 24 lish limits (including related hedge exemption provi-
 25 sions) on, or otherwise prescribe requirements re-

1 garding, the aggregate number of positions in com-
 2 modity-based swaps based on the same underlying
 3 commodity that may be held by any person, includ-
 4 ing any group or class of traders, for each month
 5 across—

6 “(A) contracts listed by designated con-
 7 tract markets;

8 “(B) contracts traded on a foreign board
 9 of trade; and

10 “(C) commodity-based swaps that perform
 11 or affect a significant price discovery function.

12 “(8) CONSIDERATIONS.—In making a deter-
 13 mination whether a commodity-based swap performs
 14 or affects a significant price discovery function, the
 15 Commission shall consider the extent to which the
 16 commodity-based swap has a significant price link-
 17 age, price discovery relationship, or other significant
 18 price relationship with 1 or more contracts listed by
 19 designated contract markets.

20 “(9) REPORTS.—The Commission may, by rule
 21 or regulation, require any person that effects trans-
 22 actions for the account of the person or the account
 23 of others in any commodity-based swap to report
 24 such information as the Commission may prescribe

1 regarding any position or positions in the com-
 2 modity-based swaps.

3 “(10) EXEMPTIONS.—The Commission, by rule
 4 or regulation, may conditionally or unconditionally
 5 exempt any person or class of persons, any com-
 6 modity-based swap or class of commodity-based
 7 swaps, or any transaction or class of transactions
 8 from any requirement the Commission establishes
 9 under this section with respect to position limits for
 10 commodity-based swaps.”.

11 (2) CONFORMING AMENDMENTS.—Section
 12 4a(b) of the Commodity Exchange Act (7 U.S.C.
 13 6a(b)) is amended—

14 (A) in paragraph (1), by striking “or elec-
 15 tronic trading facility” and inserting “or 1 or
 16 more regulated electronic transparent trade exe-
 17 cution systems”; and

18 (B) in paragraph (2), by striking “or elec-
 19 tronic trading facility” and inserting “or regu-
 20 lated electronic transparent trade execution sys-
 21 tem”.

22 (b) PROHIBITIONS.—Section 4b of the Commodity
 23 Exchange Act (7 U.S.C. 6b) is amended—

24 (1) in subsection (a)—

1 (A) in paragraph (1), by striking “or”
 2 after the semicolon at the end;

3 (B) in paragraph (2)(D)(ii), by striking
 4 the period at the end and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(3) for any person, directly or indirectly, by
 7 the use of any means or instrumentality of interstate
 8 commerce or of the mails, to effect any transaction
 9 in, or to induce or attempt to induce a transaction
 10 in, any commodity-based swap, in connection with
 11 which the person—

12 “(A) engages in any fraudulent, deceptive,
 13 or manipulative act or practice;

14 “(B) makes any fictitious quotation; or

15 “(C) engages in any transaction, practice,
 16 or course of business that operates as a fraud
 17 or deceit on any person.”; and

18 (2) in subsection (b)—

19 (A) by striking “Subsection (a)(2) of this
 20 section” and inserting the following:

21 “(1) IN GENERAL.—Subsection (a)(2)”;

22 (B) by adding at the end the following:

23 “(2) COMMODITY-BASED SWAPS.—

24 “(A) IN GENERAL.—For the purposes of
 25 subsection (a)(3), the Commission shall, by

rule, regulation, or order, define and prescribe means reasonably designed to prevent—

“(i) such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative; and

“(ii) such quotations as are fictitious.

“(B) REQUIREMENTS.—In adopting rules, regulations, or orders under subparagraph (A), the Commission shall—

“(i) consult with the Securities and Exchange Commission; and

“(ii) seek to maintain comparability of the rules, regulations, or orders with similar rules of the Securities and Exchange Commission.”.

SEC. 207. PROTECTIONS FOR MARKETING COMMODITY-BASED SWAPS TO CERTAIN PERSONS.

(a) DEFINITION OF ELIGIBLE CONTRACT PARTICIPANT.—Paragraph (15) of section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as redesignated by section 201(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by inserting “(as defined in paragraph (18) as in effect on the date of enactment of the Comprehensive Derivatives

1 Regulation Act of 2009)” after “financial insti-
 2 tution”;

3 (B) in clause (iv)(I), by striking “total as-
 4 sets” and inserting “total net assets”;

5 (C) in clause (v)—

6 (i) in subclause (I), by striking “total
 7 assets exceeding \$10,000,000” and insert-
 8 ing “total net assets exceeding
 9 \$10,000,000; or”;

10 (ii) by striking subclause (II);

11 (iii) by redesignating subclause (III)
 12 as subclause (II); and

13 (iv) in item (aa) of subclause (II) (as
 14 so designated), by striking “a net worth
 15 exceeding \$1,000,000” and inserting “total
 16 net assets exceeding \$5,000,000”;

17 (D) in clause (vii), by striking subclause
 18 (III) and the undesignated matter following
 19 that subclause and inserting the following:

20 “(III) an instrumentality, agency,
 21 or department of an entity described
 22 in subclause (I) or (II);
 23 except that the term does not include
 24 an entity, political subdivision, instru-
 25 mentality, agency, or department de-

1 scribed in subclause (I) or (III) unless
 2 the entity, political subdivision, instru-
 3 mentality, agency, or department
 4 owns and invests on a discretionary
 5 basis \$50,000,000 or more in invest-
 6 ments, except that, with respect to
 7 any State or entity, political subdivi-
 8 sion, agency or department of a State,
 9 that amount is exclusive of any pro-
 10 ceeds from any offering of municipal
 11 securities;” and

12 (E) by striking clause (xi) and inserting
 13 the following:

14 “(xi) an individual who—

15 “(I) owns and invests on a dis-
 16 cretionary basis not less than
 17 \$10,000,000;

18 “(II) owns and invests on a dis-
 19 cretionary basis not less than
 20 \$5,000,000 and who enters into the
 21 agreement, contract, or transaction in
 22 order to manage the risk associated
 23 with an asset owned or liability in-
 24 curred, or reasonably likely to be

1 owned or incurred, by the individual;
 2 or

3 “(III) is an officer or director of
 4 an entity (or a person performing
 5 similar functions) and who enters into
 6 the agreement, contract, or trans-
 7 action in order to manage the risk as-
 8 sociated with the securities of the en-
 9 tity owned by the individual at the
 10 time of entering into the agreement,
 11 contract, or transaction;”; and

12 (2) in subparagraph (C), by inserting “by rule,
 13 jointly with the Securities and Exchange Commis-
 14 sion,” after “determines”.

15 (b) LIMITATION ON PARTICIPATION IN COMMODITY-
 16 BASED SWAPS.—Section 2 of the Commodity Exchange
 17 Act (7 U.S.C. 2) (as amended by section 202(a)(2)(A))
 18 is amended by adding at the end the following:

19 “(f) LIMITATION ON PARTICIPATION IN COMMODITY-
 20 BASED SWAPS.—It shall be unlawful for any person, other
 21 than an eligible contract participant, to enter into a com-
 22 modity-based swap.”.

1 **SEC. 208. COMMODITY-BASED SWAP EXECUTION FACILI-**
 2 **TIES.**

3 The Commodity Exchange Act is amended by insert-
 4 ing after section 5g (7 U.S.C. 7b–2) the following:

5 **“SEC. 5h. COMMODITY-BASED SWAP EXECUTION FACILI-**
 6 **TIES.**

7 “(a) REGISTRATION.—No person may operate a trad-
 8 ing facility for commodity-based swaps, unless the trading
 9 facility is registered as a commodity-based swap execution
 10 facility under this section.

11 “(b) CRITERIA FOR REGISTRATION.—

12 “(1) IN GENERAL.—To be registered as a com-
 13 modity-based swap execution facility, a facility shall
 14 demonstrate to the Commission that the facility
 15 meets the criteria specified in this section.

16 “(2) TRADING AND PARTICIPATION RULES.—

17 The commodity-based swap execution facility shall—

18 “(A) establish and enforce trading and
 19 participation rules that will deter abuses; and

20 “(B) have the capacity to detect, inves-
 21 tigate, and enforce the rules, including the ca-
 22 pacity—

23 “(i) to obtain information necessary to
 24 perform the functions required under this
 25 section;

1 “(ii) to provide market participants
2 with impartial access to the market; and

3 “(iii) to obtain information that may
4 be used in establishing whether rule viola-
5 tions have occurred.

6 “(3) TRADING PROCEDURES.—The commodity-
7 based swap execution facility shall establish and en-
8 force rules or terms and conditions defining, or spec-
9 ifications detailing, trading procedures to be used in
10 entering and executing orders for commodity-based
11 swaps on the facilities of the commodity-based swap
12 execution facility.

13 “(4) FINANCIAL INTEGRITY.—The commodity-
14 based swap execution facility shall establish and en-
15 force rules and procedures to ensure the financial in-
16 tegrity of commodity-based swaps entered on or
17 through the facilities of the commodity-based swap
18 execution facility, including the clearance and settle-
19 ment of commodity-based swaps pursuant to section
20 2(f).

21 “(c) PRINCIPLES FOR COMMODITY-BASED SWAP
22 EXECUTION FACILITIES.—

23 “(1) COMPLIANCE.—

24 “(A) IN GENERAL.—To maintain registra-
25 tion as a commodity-based swap execution facil-

1 ity, the facility shall comply with the principles
2 specified in this subsection.

3 “(B) DISCRETION.—Except in cases in
4 which the Commission adopts rules or regula-
5 tions pursuant to section 8a(5), the commodity-
6 based swap execution facility shall have reason-
7 able discretion in establishing the manner in
8 which the facility complies with this subsection.

9 “(2) RULES.—The commodity-based swap exe-
10 cution facility shall monitor and enforce compliance
11 with any of the rules of the facility, including—

12 “(A) the terms and conditions of the com-
13 modity-based swaps traded on or through the
14 facility; and

15 “(B) any limitations on access to the facil-
16 ity.

17 “(3) PREVENTION OF MANIPULATION.—

18 “(A) IN GENERAL.—The commodity-based
19 swap execution facility shall permit trading only
20 in commodity-based swaps that are not readily
21 susceptible to manipulation.

22 “(B) MONITORING.—The commodity-based
23 swap execution facility shall monitor trading in
24 commodity-based swaps to prevent price manip-
25 ulation, price distortion through surveillance,

1 compliance, and disciplinary practices and pro-
 2 cedures, including methods for conducting real-
 3 time monitoring of trading and comprehensive
 4 and accurate trade reconstructions.

5 “(4) POSITION LIMITATIONS AND ACCOUNT-
 6 ABILITY.—

7 “(A) IN GENERAL.—To reduce the poten-
 8 tial threat of market manipulation or conges-
 9 tion, and to eliminate or prevent excessive spec-
 10 ulation (as described in section 4a(a)), the com-
 11 modity-based swap execution facility shall adopt
 12 for each of the contracts of the facility, as ap-
 13 propriate, position limitations or position ac-
 14 countability for speculators.

15 “(B) LIMITATION LEVEL.—For any con-
 16 tract that is subject to a position limitation es-
 17 tablished by the Commission pursuant to sec-
 18 tion 4a(a), the commodity-based derivative exe-
 19 cution facility shall set the position limitations
 20 of the facility at a level that is not higher than
 21 the Commission limitation.

22 “(5) INFORMATION SHARING.—The commodity-
 23 based swap execution facility shall—

24 “(A) establish and enforce rules that will
 25 allow the facility to obtain any necessary infor-

1 mation to perform any of the functions de-
2 scribed in this subsection;

3 “(B) provide the information to the Com-
4 mission on request; and

5 “(C) have the capacity to carry out such
6 international information-sharing agreements as
7 the Commission may require.

8 “(6) ACCESSIBILITY.—The commodity-based
9 swap trade execution facility shall make public time-
10 ly information on price, trading volume, and other
11 trading data to the extent appropriate for com-
12 modity-based swaps.

13 “(7) MAINTENANCE OF RECORDS.—The com-
14 modity-based derivative instrument execution facility
15 shall—

16 “(A) maintain records of all activities re-
17 lated to the business of the facility, including a
18 complete audit trail, in a form and manner ac-
19 ceptable to the Commission for a period of at
20 least 5 years; and

21 “(B) submit to the Commission such re-
22 ports as the Committee may require, at such
23 time, in such manner, and containing such in-
24 formation as is determined by the Commission

1 to be necessary for the Commission to perform
2 the responsibilities of the Commission.

3 “(8) EMERGENCY AUTHORITY.—The com-
4 modity-based swap execution facility shall adopt
5 rules to provide for the exercise of emergency au-
6 thority, in consultation or cooperation with the Com-
7 mission, as appropriate, including the authority to
8 suspend or curtail trading in a commodity-based
9 swap.

10 “(9) CONFLICTS OF INTEREST.—The com-
11 modity-based derivative instrument execution facility
12 shall—

13 “(A) establish and enforce rules to mini-
14 mize conflicts of interest in the decisionmaking
15 process of the facility; and

16 “(B) establish a process for resolving the
17 conflicts of interest.

18 “(d) TRADING BY CONTRACT MARKETS.—A board of
19 trade that operates a contract market shall, to the extent
20 that the board of trade also operates a commodity-based
21 swap execution facility and uses the same electronic trade
22 execution system for trading on the contract market and
23 the commodity-based swap execution facility, identify
24 whether the electronic trading is taking place on the con-

1 tract market or the commodity-based swap execution facil-
 2 ity.”.

3 **SEC. 209. ENFORCEMENT.**

4 Section 6c of the Commodity Exchange Act (7 U.S.C.
 5 13a–1) (as amended by section 202(b)(1)(I)) is amended
 6 by adding at the end the following:

7 “(h) ENFORCEMENT OF PROVISIONS APPLICABLE TO
 8 DERIVATIVES MARKET PARTICIPANTS.—

9 “(1) DEFINITION OF APPLICABLE PROVISION.—

10 In this subsection, the term ‘applicable provision’
 11 means any of section 4a(a), subsections (a), (c), and
 12 (d) of section 4g, sections 4r and 4s, and sub-
 13 sections (a) through (c)(1), (2), and (4) of section
 14 5b.

15 “(2) ENFORCEMENT BY OTHER AGENCIES.—In
 16 addition to enforcement by the Commission under
 17 this Act of compliance with applicable provisions, to
 18 the extent applicable to commodity-based swaps,
 19 such compliance shall be enforced under—

20 “(A) section 8 of the Federal Deposit In-
 21 surance Act (12 U.S.C. 1818), by the appro-
 22 priate Federal banking agency, in the case of
 23 an insured depository institution, as those
 24 terms are defined in section 3 of that Act (12

1 U.S.C. 1813), but not an affiliate of such an in-
2 sured depository institution;

3 “(B) the securities laws, as defined in sec-
4 tion 3(a) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78c(a)), by the Securities and
6 Exchange Commission, in the case of—

7 “(i) a broker or dealer, as defined in
8 section 3(a) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78c(a)) (other than a
10 broker or dealer registered under section
11 15(b)(11) of that Act (15 U.S.C.
12 78o(b)(11)) that is not an affiliate of an
13 insured depository institution, as defined
14 in section 3 of the Federal Deposit Insur-
15 ance Act (12 U.S.C. 1813));

16 “(ii) an investment adviser, as defined
17 in section 202(a) of the Investment Advis-
18 ers Act of 1940 (15 U.S.C. 80b–2(a));

19 “(iii) an investment company, as de-
20 fined in section 3 of the Investment Com-
21 pany Act of 1940 (15 U.S.C. 80a–3);

22 “(iv) any other entity for which the
23 Securities and Exchange Commission is a
24 primary regulator;

1 “(v) any affiliate of an insured depository
2 institution; or

3 “(vi) any other person that is not—

4 “(I) a futures commission merchant
5 or an introducing broker (except
6 a futures commission merchant
7 or an introducing broker registered
8 pursuant to section 4f(a) of this Act
9 or an affiliate of an insured depository
10 institution);

11 “(II) a commodity pool operator
12 or commodity trading advisor (except
13 an affiliate of an insured depository
14 institution); or

15 “(III) a person specified in sub-
16 paragraph (A) or (C); and

17 “(C) the Federal Housing Enterprises Fi-
18 nancial Safety and Soundness Act of 1992 (12
19 U.S.C. 4501 et seq.), by the Federal Housing
20 Finance Agency, in the case of a regulated enti-
21 ty, as defined in section 1303 of the Federal
22 Housing Enterprises Financial Safety and
23 Soundness Act of 1992 (12 U.S.C. 4502).

24 “(3) VIOLATIONS TREATED AS VIOLATIONS OF
25 OTHER LAWS.—

“(A) IN GENERAL.—For purposes of the exercise by any agency referred to in paragraph (2) of the powers of the agency under any provision of law referred to in that paragraph, a violation of any applicable provision, as the provision applies to commodity-based swaps, shall be considered to be a violation of a requirement imposed under that provision of law.

“(B) ADDITIONAL AUTHORITY.—In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with applicable provisions, as the applicable provisions apply to commodity-based swaps, any other authority conferred on the agency by law.”.

SEC. 210. ENFORCEABILITY OF COMMODITY-BASED SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction that is a commodity-based swap shall be void, voidable, or unenforceable by either party to

1 the commodity-based swap, and no party to the com-
 2 modity-based swap shall be entitled to rescind, or re-
 3 cover any payment made with respect to, the com-
 4 modity-based swap under this section or any other
 5 provision of this Act based solely on the failure of
 6 either party to the agreement, contract, or trans-
 7 action to satisfy its respective obligations under sec-
 8 tion 4a(a), subsections (a), (c), and (d) of section
 9 4g, sections 4r and 4s, and subsections (a) through
 10 (c)(1), (2), and (4) of section 5b with respect to the
 11 commodity-based swap.”.

12 **TITLE III—OTHER PROVISIONS**

13 **SEC. 301. MARGINING AND OTHER RISK MANAGEMENT** 14 **STANDARDS FOR CENTRAL COUNTERPAR-** 15 **TIES.**

16 (a) AGENCY ACTIONS.—The Securities and Exchange
 17 Commission and the Commodity Futures Trading Com-
 18 mission shall each promulgate rules requiring each clear-
 19 ing agency (as defined in section 3(a)(23) of the Securities
 20 Exchange Act of 1934 (15 U.S.C. 78c(a)(23))) and de-
 21 rivatives clearing organization (as defined in section
 22 1a(13) of the Commodity Exchange Act (7 U.S.C.
 23 1a(13))) to have robust risk management controls, includ-
 24 ing risk margin collateral requirements, to assure the abil-
 25 ity to meet their settlement obligations.

1 (b) CONSULTATION REQUIRED.—To assure regula-
 2 tion of risk management controls, the Securities and Ex-
 3 change Commission and the Commodity Futures Trading
 4 Commission shall consult with each other and the Board
 5 of Governors of the Federal Reserve System, shall seek
 6 to maintain comparability of such rules, and shall give
 7 consideration to the recommendations of the Board of
 8 Governors of the Federal Reserve System before adopting
 9 rules under this section.

10 **SEC. 302. DETERMINING THE STATUS OF SWAPS.**

11 (a) PROCESS FOR DETERMINING THE STATUS OF A
 12 SWAP.—

13 (1) RULEMAKING.—The Securities and Ex-
 14 change Commission and the Commodity Futures
 15 Trading Commission shall jointly issue rules estab-
 16 lishing a process for resolving any disagreement be-
 17 tween the agencies regarding the status of a deriva-
 18 tive as a security-based swap, a commodity-based
 19 swap, a security derivative, or a commodity deriva-
 20 tive.

21 (2) CONTENT.—The rules adopted under this
 22 section shall—

23 (A) include a method for determining the
 24 status of a derivative as a security-based swap,
 25 a commodity-based swap, a security derivative,

1 or a commodity derivative within 90 days after
2 the date of the commencement of the deter-
3 mination process; and

4 (B) require the agencies to consider, in
5 making such determination, the nature of the
6 derivative, the extent to which the derivative is
7 economically similar to instruments that are
8 subject to regulation by the Securities and Ex-
9 change Commission or the Commodity Futures
10 Trading Commission, the appropriateness of
11 regulation of the derivative under either the se-
12 curities laws or the Commodity Exchange Act,
13 and such other factors as the Securities and
14 Exchange Commission and the Commodity Fu-
15 tures Trading Commission may prescribe.

16 (b) JUDICIAL RESOLUTION.—

17 (1) IN GENERAL.—If the Securities and Ex-
18 change Commission and the Commodity Futures
19 Trading Commission are unable to determine the
20 status of a derivative as a security-based swap, a
21 commodity-based swap, a security derivative, or a
22 commodity derivative pursuant to the process estab-
23 lished in subsection (a), either agency may petition
24 the United States Court of Appeals for the District
25 of Columbia Circuit for a determination of the sta-

1 tus of the derivative as a security-based swap, a
2 commodity-based swap, a security derivative, or a
3 commodity derivative.

4 (2) EXPEDITED REVIEW.—The United States
5 Court of Appeals for the District of Columbia Cir-
6 cuit shall complete all action on a petition filed in
7 accordance with paragraph (1), including rendering
8 a final determination of the status of the derivative
9 as a security-based swap, a commodity-based swap,
10 a security derivative, or a commodity derivative be-
11 fore the end of the 60-day period beginning on the
12 date on which such petition is filed, unless all parties
13 to such proceeding agree to any extension of such
14 period.

15 (3) STANDARD OF REVIEW.—The court shall
16 determine the status of a new derivative instrument
17 as either a security-based derivative, a security-
18 based swap, a commodity-based swap, a security de-
19 rivative, or a commodity derivative, based upon the
20 factors described in subsection (a)(2), giving def-
21 erence neither to the views of the Securities and Ex-
22 change Commission nor the Commodity Futures
23 Trading Commission.

24 (4) SUPREME COURT REVIEW.—Any request for
25 certiorari to the Supreme Court of the United States

1 of any determination of the United States Court of
2 Appeals for the District of Columbia Circuit with re-
3 spect to a petition for review under this subsection
4 shall be filed with the Supreme Court of the United
5 States as soon as practicable after such determina-
6 tion is made.

7 (5) JUDICIAL STAY.—The filing of a petition
8 pursuant to paragraph (1) shall operate as a judicial
9 stay of the identification of a derivative as a secu-
10 rity-based swap, a commodity-based swap, a security
11 derivative, or a commodity derivative until the date
12 on which the determination of the court is final, in-
13 cluding any appeal of such determination.

14 **SEC. 303. STUDY AND REPORT ON IMPLEMENTATION.**

15 (a) STUDY REQUIRED.—The Comptroller General of
16 the United States shall conduct a study of—

17 (1) how the Commodity Futures Trading Com-
18 mission and the Securities and Exchange Commis-
19 sion have implemented this Act and the amendments
20 made by this Act;

21 (2) the extent to which jurisdictional disputes
22 have created challenges in the process of imple-
23 menting this Act and the amendments made by this
24 Act; and

1 (3) the benefits and drawbacks of harmonizing
2 laws implemented by the Commodity Futures Trad-
3 ing Commission and the Securities and Exchange
4 Commission, and merging those agencies.

5 (b) REPORT REQUIRED.—Not later than 1 year after
6 the date on which all rules are issued under section 304,
7 the Comptroller General shall submit a report on the re-
8 sults of the study required by this section to Congress,
9 the Commodity Futures Trading Commission, and the Se-
10 curities and Exchange Commission.

11 **SEC. 304. RULEMAKING.**

12 The Securities and Exchange Commission, the Com-
13 modity Futures Trading Commission, and the appropriate
14 regulatory authorities (as that term is defined in section
15 15F(g) of the Securities Exchange Act of 1934, as added
16 by this Act, or section 4s(a) of the Commodity Exchange
17 Act, as added by this Act), as applicable, shall issue rules
18 under sections 15F(b), 15F(c), 15F(f), 17(l), 17C(c)(2),
19 and 17C(d)(2) of the Securities Exchange Act of 1934 (as
20 added by this Act), sections 4r(c)(2), 4r(d)(2), 4s(c),
21 4s(d), and 4s(g) of the Commodity Exchange Act (as
22 added by this Act), and sections 301 and 302 of this Act,
23 not later than 180 days after the date of enactment of
24 this Act.

1 **SEC. 305. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b) or as specifically provided in the amendments made
4 by this Act, this Act and the amendments made by this
5 Act, shall become effective on the date of enactment of
6 this Act.

7 (b) OTHER EFFECTIVE DATES.—The amendments
8 made by sections 102(b) and 202(b) of this Act and the
9 provisions of section 15F(a) of the Securities Exchange
10 Act of 1934 (as added by this Act) and section 4s(b) of
11 the Commodity Exchange Act (as added by this Act) shall
12 become effective 6 months after the date of enactment of
13 this Act.

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